VIEW OF SOCIETY

E U R O P

IN ITS PROGRESS FROM

RUDENESS TO REFINEMENT:

OR,

INQUIRIES

CONCERNING

THE HISTORY OF LAW, GOVERNMENT, AND MANNERS.

By GILBERT STUART, LL. D.

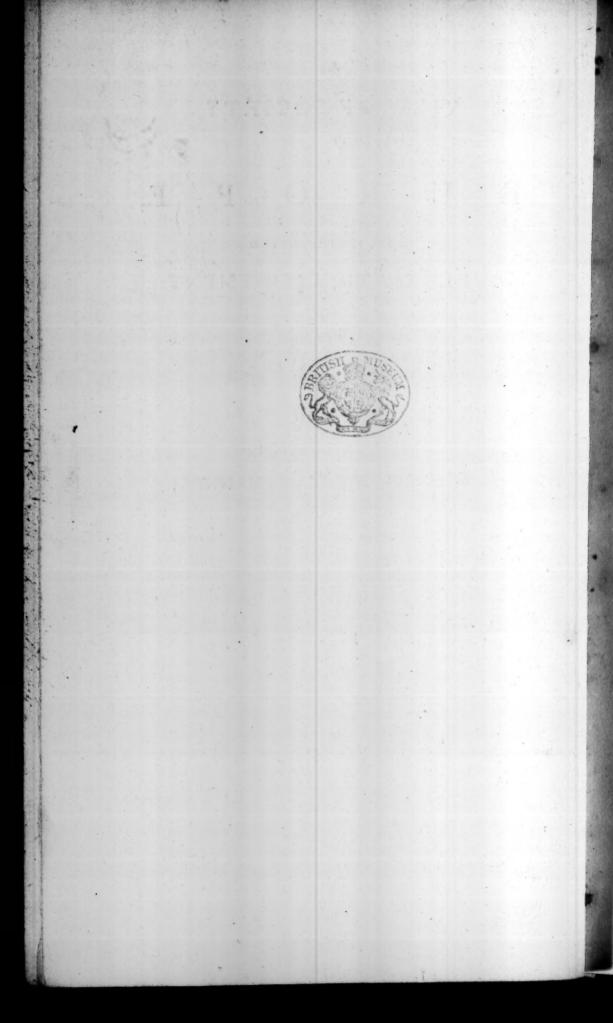
THE SECOND EDITION.



QUAE PRISCIS MEMORATA CATONIBUS ATQUE CETHEGIS, NUNC SITIS INFORMIS PREMIT, ET DESERTA VETUSTAS. HOR.

EDINBURGH:

PRINTED BY J. ROBERTSON, Nº 39, SOUTH BRIDGE-STREET. MDCCXCII.



PREFACE

TO THE SECOND EDITION.

THE first edition of this work was printed in the year 1778, and was received with attention fuitable to its uncommon merit. The historians of the feudal system have never been distinguished for popularity. The fubject, though extremely curious, is in itself intricate; and, while it opens an unbounded field for inquiry, a writer of moderate abilities is often tempted to expatiate on topics which are minute and trifling. The learned, but ponderous volumes, of Du Cange and Spelman, for example, are fufficient to chill the nerves of the most ardent reader. Even several publications on this fubject, which are evidently intended for general perufal, have failed of that lafting applause which might have been expected. from the reputation of their authors. We wish to imitate Dr. Stuart, in speaking with tenderness of the late worthy and truly patriotic Lord Kaimes, but it is now perfectly known that his treatife on Scottish Antiquities, and his Historical Law Tracts, bear ftrong marks of hafte and of a lively imagination. The History of Feudal Property in Britain, published by a learned and ingenious Scots Judge, still alive, is now spoke of, by himself, as a trifle. Montesquieu's Effay on the Spirit of Laws is, perhaps, the most entertaining performance that ever was, or ever will be published a ij

published on the subject of jurisprudence; yet it abounds with affectation and obscurity, in point of style, and with errors, in point of fact. From the present work it appears that even our celebrated historians, Mr. Hume and Dr. Robertson, are not to be consulted on the seudal system with implicit considence, and the latter has, more than once, been candid enough to acknowledge, that he considered this publication as a valuable supplement to the first volume of his History of the Emperor Charles the Fifth.

The View of Society in Europe, in its progress from Rudeness to Refinement, is, indeed, one of those few productions which are calculated to endure the hardest test of criticism. Extensive learning, and profound refearch, are happily combined with the pureft elegance of composition. The writer is prone to controversy; but the erudition of an accomplished scholar is always adorned by the liberality of a gentleman. This volume exhibits a concife, but comprehensive survey of the feed-bed of our laws and manners, and reflects, in every page, additional light on the earlier periods of the history of human nature. The features of the Author's mind are ftrongly marked in the course of his work. His abilities will be long remembered in the annals of British literature. His character was bold, interesting, and original. Perfonal animofity was, we hope, buried in his grave.

This edition possesses peculiar advantages. The long quotations of French and Latin were, at least,

least, inconvenient to almost every reader. Our native language is like an old friend, with whom we are perfectly acquainted, and with whom we are always happy to meet. To every quotation of this kind, therefore, we have subjoined a translation, and this improvement was the more necessary, as many of the Latin passages, having been written in the dark ages, abound with barbarous words, and are entirely inexplicable by a common dictionary. The dissiculty of such a version has been fully acknowledged by Dr. Stuart, in his notes; and if we have any where mistaken the meaning of the original text, those who are best qualified to detect an oversight will, as usual, be most disposed to forgive it.

The former price of the volume was fifteen shillings, in boards. This was too high; and, though the additions have added considerably to its length, we now offer it to the public at a reduced price.

EDINBURGH, May 1792.

ADVERTISEMENT.

It is usual to treat law, manners, and government, as if they had no connection with history, or with each other. Law and manners are commonly understood to be nothing more than collections of ordinances and matters of fact; and government is too often a foundation for mere fpeculation and metaphyfical refinements. is only a science, when observed in its spirit and history; government cannot be comprehended but by attending to the minute steps of its rife and progression; and the systems of manners, which characterife man in all the periods of fociety which pass from rudeness to civility, cannot be displayed without the discrimination of these different fituations. It is in the records of history, in the scene of real life, not in the conceits and the abstractions of fancy and philosophy, that human nature is to be studied.

But, while it is in the historical manner that laws, customs, and government, are to be inquired into, it is obvious, that their dependence and connection are close and intimate. They all tend to the same point, and to the illustration of one another. It is from the consideration of them all, and in their union, that we are to explain the complicated forms of civil society, and the wisdom and accident which mingle in human affairs.

After

After this method, I have endeavoured to investigate my subject. The topics I canvass in the following sheets, are various, and constitute a difficult and important branch of my undertaking. If I am so fortunate as to obtain the sanction of the public approbation, I shall proceed to fill up the picture I have begun, and consider, in suture publications, civil jurisdiction, nobility, constitutional law, and cultivated manners.

The foundations of a work like this I have attempted, must be laws of barbarous ages, ancient records, and charters. These I could not incorporate, with propriety, in my narrative. This instructive, but tasteless erudition, did not accord with the tenor of a portion of my performance, which I wished to address to men of elegance, as well as to the learned. It confifted, however, with the fimpler and the colder flyle of differtation. My proofs, accordingly, appear by themfelves; and, in confequence of this arrangement, I might engage in incidental discussions; I might catch many rays of light that faintly glimmer in obscure times; and, I might defend the novelty of my opinions, when I ventured to oppose established tenets, and authors of reputation.

Though I have employed much thought and affiduity to give a value to these papers, yet I communicate them to the public with the greatest dissidence. My materials were buried in the midst of rubbish, were detached and unequal. I had to dig them up anxiously, and with patience; and, when discovered and collected, it was still

more

more difficult to digest and to fashion them. I had to struggle with the darkness and imperfection of time and of barbarity. And, from the most able historians of our own and foreign nations, who might naturally be expected to be intelligent guides for the paths I have chosen, I could derive no advantage. They generally prefer what is brilliant to what is useful; and they neglect all disquisitions into laws and into manners, that they may describe and embellish the politics of princes, and the fortunes of nations, the splendid qualities of eminent men, and the lustre of heroic action.

EDINBURGH, January 1778.

A VIEW

SIR,

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When I understood that a Second Edition of this book was printing and near finished, I desired the favour that you would add to it the two following letters which refer to it, without intending the smallest reslection on any person alive. The natural affection of a parent will, to the impartial public, be a sufficient apology, and prevent any reslections that can be made either against you, whom I desired to publish them, or me, to whom the approbation of judges so justly esteemed, amongst many others, is the only consolation that is now, alas! left.

I am,

SIR,

Your obedient fervant,

FISHERROW, JUNE 23, 1792.

GEO. STUART.

Copy of SIR WILLIAM BLACKSTONE'S Letter to the AUTHOR. The Original in the hands of Mr. John Murray, Bookseller, London.

SIR,

On my return to town from a part of my circuit, last week, I found on my table your valuable Work, for which I return you my thanks; and shall take the first opportunity my leisure affords of giving it a careful perusal. I entirely agree with you, that Law cannot be studied as a science without calling in the aid of History; and the higher that history ascends into the ruder ages of mankind, the better interpreter it will be of many ancient legal formularies and customs. I perceive, by occasionally dipping into your notes as I opened the leaves of the book, that in some respects you differ from a work of mine, to which you are pleased to pay much greater compliments than it deserves: And your observations, so far as I have seen, appear to me to be just; and I fear that an accurate in-

quirer may still find, in other parts of it, sufficient marks of what was really the case, that the book was not originally compiled with any view of submitting it to public inspection.

I am,

SIR,

Lincoln's-Inn-Fields, 3 London, March 16, 1778. Your obliged humble fervant,

To Dr. Gilbert Stuart.

W. BLACKSTONE.

Copy of DR. GARDEN'S Letter to a Gentleman who had lent him the late Dr. Gilbert Stuart's View of Society.

DEAR SIR,

WITH my best compliments and thanks you will receive Mr. Stuart's volume, the perufal of which has given me real pleasure, much amusement, and much information, for which I acknowledge my obligations both to him and you. His criticisms on Dr. Robertson pleased me much. Well does the Reverend Doctor deferve it all. Few men have arrived at fo high a fame in the literary path of historic composition. His History of Scotland, after all, is his master-piece. Time will try the merit, and possibly show more imperfections in his last performances. On what foundation then, will the general exaggerated praise of them rest? The magnitude and gigantic fize of some characters in lifetime, are like the Goliah of the Philistines. timidate whole hofts of pigmies; but a David, or a Gibby Stuart, will now and then arise and level them to the common fize. Mr. Stuart has shewn how carelessly and superficially the good Doctor has read Tacitus, and what chimerical conclusions he has drawn. first volume of Charles the Fifth shows much reading; and to a kingdom which has only lately turned its inquiries to the fludy of the feudal constitutions and the customs of the middle and dark ages, it will appear to be a curious and rare morceau. But in France, or in

Germany and Italy, where men of parts have often dipt into these matters, and wrote very finished treatises on these very subjects, the Professor's merit will appear, and really does appear much less than in Britain. It may be particularly fortunate for the Doctor's high clerical confequence, that there are but few around him who read Italian or Spanish, the languages from which he has chiefly taken, or rather transcribed his Hiistories of Charles the Fifth and of America. If Guicciardini and Antonio de Solis were each to claim their share of the Doctor's works, little indeed would remain to support the Colossal fize of his present same; and yet after the most glaring plagiarism from both these authors, particularly the last, he has the true prelatical charity to vilify and lessen the merit of Antonio de Solis as a writer. This hurts one, because the Doctor surely has much merit of an intrinsic worth, even when stripped of the tumid and fwollen praises that are lavished on him; why then descend to the pitiful method of gaining same by a depreciation of others to whom the world attributes, with justice, no small share of merit. I with, for the sake of truth, and of true historical criticism, that more Gilbert Stuarts may be found; and if he, at his leifure, will follow the Doctor through the Italian and Spanish authors with the same care and accuracy of attention as he has bestowed on Tacitus, I will venture to assure him that he will have a field of entertainment, and the world a fund of useful instruction and information from his labours. When a Thucydides, a Xenophon, a Cæsar, a Polybius, a Guicciardini, a Davila, a Bentivoglio, write history, they tell us what they faw and what they did, and in all which magna pars fuerunt. All of them great and active in the fenate and in the field, and generally in both. But when a monk or priest attempts history, to recount the actions of great men, one is obliged to recollect what the Prince of Conde, on reading one of these histories, said to Turenne. " By hea-" vens these fellows only make us speak and act just as "they would have done, had they been in our fitua-"tion." To the best of my recollection this is the fentiment, though not the expression exactly. Who could better write the transactions of the Council of Trent, than a man versant in all the deep wiles and cunning

fubtility of church-men, and than one present and engaged in all their schemes, acts, and deeds? Such a man was found in Fra Paol, and his history of that council is in that point fimilar to Thucydides's, Cæfar's, and Davila's histories. He was himself a pars magna. This I take to be effentially necessary. What he sees, he can truly relate; and what he receives from information, his experience and knowledge of these matters enable him to judge well of. Polybius travelled all the length of the two Spains, and croffed the Alps in Hannibal's tract, folely to enable himself to relate that march with justness. Guicciardini was in many of the fcenes he relates, and was no ignoble personage in them. Davila was an officer of diftinguished rank in the armies of Henry Third and Fourth of France, and from an intimacy highly confidential with the Queen-mother of Charles and Henry, was enabled to be as if a fecretioribus. Bentivoglio was to the Spanish General what Polybius was to Scipio.

If the annals and transactions of the General Assembly of the Church of Scotland were to be compiled and wrought into a history, who would be the proper perfon in Scotland to do it? And pray why would He be the properest person? because he knows the men, their arts, and the whole ground better than any other. The whole cart de pays is clearly before him. Dr. Robertson's character of Luther just shows at a coup d'oeil where his fort lies; yet he is a great man, and truly one of the first luminaries of the present age, and one of the ornaments of Scotland. I beg the Doctor's pardon for all this scrawl and freedom, and your's for the trouble I give you in reading such matters. I am sick to day, and therefore querulous and garrulous, but ever

and always your's, &c.

ALEX. GARDEN.

CHARLESTOWN, JULY 13, 1780.

DR. GARDEN was a Gentleman of great eminence in his profession, and very justly esteemed. Not chusing to stay in America after the troubles began, he settled in London, and died lately in great practice. The original of this letter is in the hands of a Gentleman in this country to whom it was wrote.

VIEW OF SOCIETY

IN

E U R O P E.

BOOK I.

CHAP. I.

Of the GERMANS before they left their Woods.

SECT. I.

The Institutions, Government, and Character of the Germanic Tribes.

It is of little moment to inquire into the origin of the ancient Germans. Their manners and government are subjects more interesting, and concerning which there are memorials of great curiosity and importance. The picture of these nations has been drawn by Tacitus; and the affairs of men never sound an observer more accurate and penetrating. In following such a guide, it is impossible not to convey information; and, on this subject, no modern has a title to speculate, who has not paid a most minute attention to his treatise. Antiquity has not given to the kingdoms of Europe a present more valuable.

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The leading circumstance in discriminating the manners of barbarous and refined times, is the difference which exists between them in the knowledge and the management of property. want of commerce, and the ignorance of money. permit the barbarian to exercise a generosity of conduct, which the progress of the arts is to destroy. The Germans conceived not that their defcendants were to grow illustrious by acquisitions of land, and that they were to employ the metals as a fource of influence. Land was yet more connected with the nation than the individual. The territory possessed by tribes was considered as their property, and cultivated for their use. The produce belonged to the public; and the magistrate, in his diffributions of it, paid attention to the virtue and the merits of the receiver [1].

The German, accordingly, being unacquainted with particular professions, and with mercenary pursuits, was animated with high sentiments of pride and greatness. He was guided by affection and appetite; and, though sierce in the field, and terrible to an enemy, was gentle in his domestic capacity, and found a pleasure in acts of beneficence, magnanimity, and friendship.

A state of equality, in the absence of the distinctions of property, characterised the individuals of a German tribe, and was the source of their pride, independence, and courage. Personal qualities were alone the soundation of pre-eminence. The sons of a chief were not distinguished from those of the simple warrior, by any superior advantages

vantages of education. They lived among the same cattle, and reposed on the same ground, till the promise of worth, the symptoms of greatness, separated the ingenuous from the vulgar, till valour claimed them [2]. Ignorant of the arts of peace, they purfued, with keennefs, the occupations of war. Where communities, perpetually inflamed with rivalship and animosity, brought their disputes to the decision of battles, and were agitated with revenge and with glory, the opportunities of diffinction were frequent. The only profession known to the Germans was that of arms. The ambitious and enterprising courted dangers where they might acquire renown, and difplay their conduct and their prowefs. To fuch a height did the military ardour prevail, that, if a tribe happened at any time to languish in ease, its youthful and impatient heroes fought those nations who were then at war. They disdained to remain in inaction; and could not so easily be perfuaded to till the earth, and to wait its returns, as to challenge an enemy, and to hazard their lives. They thought it mean and ignoble to acquire by their labour, what they might purchase with their blood [3].

The animated temperament they displayed in war, was also apparent in their private concerns. To the chase they addicted themselves with no measure of moderation. And, in parties at dice, they engaged in their soberest and most serious hours, and with such hope or temerity, that they risked their liberty and persons on the last throw.

The affection with which they embraced their friends was ardent and generous. To adopt the refentments, as well as the amities of their relations and kindred, was a duty which they held indispensible [4]. In hospitality they indulged with the most unbounded freedom. The entertainer, when exhausted, carried his guest to the house of his next neighbour. Invitations were not waited for; nor was it of consequence to be invited. A reception, equally warm and hearty, was, at all times, certain. On these occasions, giving way to the movements of the heart, they delighted in presents; but they neither thought themselves entitled to a return for what they gave, nor laid under an obligation by what they received [5]. They yielded to the impulse of pasfion, and the pleasure they felt was their recompense. Their gifts were directed by no view of an immediate or diffant advantage; their generofity was no traffic of interest, and proceeded from no motive of defign.

But, amidst all this ardour, they were averse from labour. The women and the infirm discharged the offices of the house. The warrior did not submit to any domestic occupation. He was to bask whole days by the fire; and a sloth, joyless and supine, was to succeed and to relieve the briskness and satigue of action [6]. His admiration of fortitude, which was the cause of his indolence, and this contempt of drudgery, was at the same time to produce a stateliness in his behaviour. He was not to lose his virtue, or to weaken

weaken the vigour of his mind, in the practice of mechanic or unworthy pursuits. When he walked, he seemed conscious of importance; he cast his eyes to the ground, and looked not around him for the objects of a vain and frivolous curiosity.

In the diet of these nations, there was much fimplicity; it confifted of wild apples, new-killed venison, and curdled milk. They expelled hunger without oftentation, or any fludied preparations of food; but, in fatisfying thirst, they were less temperate. When supplied to their defire in intoxicating liquors, they were no less invincible in vice than in valour [7]. Yet, in the difgraceful moments of debauch, they applied to public affairs, and debated concerning peace and war; and, in the heat of their disputation and riot, the dagger was often to deform with blood the meetings . of friendship and of business. In these seasons, they imagined that their minds were disposed to conceive honest fentiments, and to rise into noble ones. But, in an after-period, the undiffembled thoughts of every one were diligently canvaffed; a proper attention being paid to the time when they were first delivered, and to the purpose which then employed them. It was their meaning to deliberate when they could not deceive, and to form resolutions when they could not err [8].

They did not live in towns, and could not endure to have their houses contiguous. They built as they found a spot to their fancy, as they were attracted by a fountain, a plain, or a grove, But, being unacquainted with a private property in

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land, they were not ambitious of possessions. They vied not in the extent or the fertility of their grounds, in the rearing of orchards, and in the inclosing of meadows. Corn was the only produce they required from the earth; and they divided not the year into proper seasons. They understood, and had names for winter, spring, and summer, but had no idea of the term, and little knowledge of the fruits of autumn [9].

In their religion they were groß, like almost all nations, whether favage or cultivated. They believed in a plurality of gods; but thought it derogatory from their majesty to shut them up within walls, or to fashion them in resemblance to any human form. Their groves were appropriated to the uses of devotion; and, in the awful respect infpired by filence in the deep recesses of their woods, they felt and acknowledged the power of their dei-To augury and divination they were much addicted; and they were fond to draw prognoftics and intimation from the running of water, the flight of birds, and the neighing of horses. Their priefts had greater authority than their kings or chieftains; for it was not by any principle of expediency or reason that their actions and conduct were to be afcertained and examined. They were governed by the impulses and dictates of their divinities; and, being the interpreters of the will and intentions of these, they were able to exercise a jurisdiction uncontrollable and facred [10].

The office of a magistrate was known and refpected among these nations. The prince, or the chieftain chieftain of a district, with the body of his retainers or followers, constituted a court, which heard accusations, and determined concerning crimes. Traitors and deserters were hanged on trees. Cowardice, and the crime against nature, were considered as of equal atrocity; and the persons convicted of them were choked in mire and swamps by the pressure of hurdles. A corporal punishment, and compensations in corn or cattle, were the atonements of lesser delinquencies [11].

Noble birth, but more frequently the poffession of superior qualities, entitled to the office and jurifdiction of a chief: And the general of an army was to command less by authority than from example. He drew respect and observation by his activity, his address, and the splendour of his ex-Even the hopes and ambition of the ploits [12]. fimple warrior were made to depend on his perfonal honour and courage. Yet, with all this attention to merit, and with all their elevation of character, they were prone to deceive and to circumvent. They accounted it meritorious to feal upon their enemies in the darkest nights; they blackened their shields, and painted their bodies, to be terrible; and, to give ground, but immediately to return to the charge, was a common and an admired feat of their prudence. Cunning and stratagem appeared to them to be wisdom; and, though remarkable for courage, both active and paffive, they exposed it to fuspicion by the arts, which, in a cultivated age, are characteristic of the pufillanimous [13].

It is also remarkable, that, though attentive to justice, with a punctilious exactness, within the bounds of their particular nations, they despised it with regard to other flates and communities. Beyond the frontier of his tribe, the German was a thief and a robber. While, in the one instance, his theft or depredation was a crime of the deepest dye, and punished with death, it was, in the other, a mark of valour, and an expression of virtue. To make incursions against a neighbouring people. though at peace; to carry off their cattle, and to lay waste their territory, were actions of renown and greatness. They roused the ambition of the valorous, and were occupations in which they acquired reputation, and prepared themselves for fcenes of greater danger and glory [14].

But, the circumstance in the customs of these nations the most valuable, and which, like all their more remarkable features, arose from their unacquaintance with property, was the passion they entertained for independence and liberty. Every perfon who was free, confidered himfelf in the light of a legislator. The people prescribed the regulations they were to obey. They marched to the national affembly to judge, to reform, and to punish; and the magistrate and the sovereign, instead of controlling their power, were to respect and to submit to it. Stated or regular terms were appointed for the convention of their public council; and a freedom of speech, entire and unlimited, was permitted. His age, his eloquence, his rank, and the honour he had acquired in war,

were the qualities which procured attention to the fpeaker; and the people were influenced by perfuasion, not by authority. A murmur coarse, and often rude, expressed their dissent: The rattling of their armour was the flattering mark of their

applause [15].

While these institutions and manners are expressive, in general, of the German communities, there are exceptions which it is not my province to explain. In the enumeration which is made by the Roman historian of the Germanic tribes, there are perceivable unequal degrees of civilization and refinement. The Chauci, for example, were an improved and an illustrious nation, and supported their greatness by their probity. They were lovers of peace and quiet, and contemners of avarice and ambition. They provoked no wars; engaged in no incursions or robberies; and, what may be confidered as a certain proof of their power and valour, preserved their superiority, without having recourfe to injuries and oppressions. When called upon, however, by the exigency of their affairs, they were not flow to take arms and to levy They inhabited an extensive territory. were rich in men and in horfes, and in peace and in war maintained their reputation. The picture of the Fenni, on the contrary, is that of mere rudenefs. They had no arms, no horses, no religion. To the most savage sierceness, they had joined the most abject poverty. They clothed themselves in the skins of beasts, fed, at times, on herbage, and flept on the earth. Their chief dependence

was on their arrows; and, having no iron, they pointed them with bones. The women accompanied the men to the chase, and demanded a share of the prey. A covering, inwrought with boughs, was all the shelter which defended their infants from the rigour of feafons, and the ferocity of animals. To this miserable dwelling their young men returned; and here their old men found a refuge. These courses of barbarousness, this melancholy fadness, they preferred to the fatigue of cultivating the earth, and of building houses, to the agitations of hope and fear attendant on a care of their own fortunes, and on a connection with those of others. Unapprehensive of any danger from men, and awed by no terror of the gods, they had reached a state which is nearly unattainable to all human endeavours—the being entirely without a wish [16].

The majority of the tribes or communities of Germany may be faid to have occupied a middle state between the cultivation of the Chauci and the savageness of the Fenni. And it is sufficient to have selected and expressed the more general and the more distinguished particulars which regard their institutions, government, and character. With these in my view, I proceed to describe the condition of their women; a subject which, though little attended to by the learned, may lead to conclusions of interest and curiosity.

SECT. II.

An Idea of the German Women.

It has been afferted, that men, in favage and barbarous periods, are carried to the fex merely from the incitement of animal gratification, and that they feel not the power of beauty, nor the pleafures which arife from love; and a multitude of facts have been produced from history to confirm this theory. It is concluded, of confequence, that, in such times, women are in an abject state of servility, from which they advance not till the ages of property [1].

One would fancy it, notwithstanding, confishent with reason, to imagine, that the sexes, in every period of society, are important to each other; and that the member of a rude community, as well as the polished citizen, is susceptible of tenderness and sentiment. He is a stranger, indeed, to the metaphysic of love, and to the sopperies of gallantry; but his heart cannot be insensible to semale attractions. He cannot but be drawn by beauty; he must know a preference in the objects of his affection; and he must seel and experience, in a certain degree, at least, that bewitching intercourse, and those delightful agitations, which constitute the greatest charm of cultivated life.

This opinion, I conceive, is strongly confirmed by the history of the Germanic states. Their general character, with particular and obvious facts,

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illustrate the importance and the consideration in which they held their women.

Even in the age of Cæsar, the German tribes had conceived and acknowledged the idea and existence of a public interest, and, in general, had submitted to a mode of government in which the chiefs and the people had their departments as well as the prince. They are described in a similar, but a more cultivated situation, by Tacitus; and the spirit of liberty and independence which animated their actions, was to produce that limited and legal administration which still gives distinction and dignity to the kingdoms of Europe. Among such nations, accordingly, the women were necessarily free, and sensible only of the restraints which arise from manners.

The state of society, which precedes the know-ledge of an extensive property and the meannesses which slow from refinement and commerce, is in a high degree propitious to women. To treat them with cruelty does not consist with the elevation of sentiment which then prevails. Among the people, of whom I speak, even the slave was exposed to no studied insult or oppression [2]. Of the women, the warrior and the citizen considered himself as the friend and the protector; and their weakness only served to render the attachment to them the more lasting and tender.

While courage and strength and feats of prowess gave glory to the men, the women were judged of by a different standard. They were studious to recommend themselves by the performance of domestic

domestic duties. They attended to the cares of the family and the house; and the mother found a long and a serious occupation in the rearing of her children, who were not allowed to approach the father in public till a certain age [3]. To her daughters she endeavoured to give the accomplishments which might win to them the chiefs who were most celebrated and powerful. To her sons she recited the exploits of their ancestors, and formed them to valour.

Nor are these the only sources of the respect which was paid to them. It has been often remarked, that, in every period of fociety, the women are more disposed to rapture and devotion than the men, and that their curiofity to pry into futurity is more extravagant. The fuperfittious weaknesses, however, of the sex, which, in refined times, are a subject of ridicule, lead to reverence and attention in a rude age. The Germanic armies feldom took the field without forcereffes; and these had an important share in directing their operations [4]. In private and civil affairs, their authority was not less decifive. On the foundation of the wonder and aftonishment excited by the knowledge arrogated by the women, by the skill they displayed in divination, and, above all, by the ceremony and the cruelty of the rites they practifed, a folid and permanent influence was established [5]. It was thought. that they had fomething divine in their nature; and the names of many of them, who were worthipped as divinities, have come down in history [6].

To attend to the qualities of plants, and to the curing of wounds, was another branch of their occupation [7]; and, in times of war and depredation, it is difficult to conceive a circumstance which could recommend them more. Nor were they inattentive to adorn their persons. The linen, which made the principal article of their dress, was of their own manufacture; and they had a pride in intermixing it with purple [8]. They went frequently into the bath; their hair flowed in ringlets; a part of their charms was industriously displayed; and, in evidence of their beauty, there may be brought the testimony of the historian, and the song of the poet [9].

In the more ferious and important wars in which these nations engaged, the chiefs and warriors feem constantly to have carried their wives and female relations along with them as an incitement to their These objects of their affection they placed at a small distance from the field of battle ! And the most terrible calamity which could befal them, was their captivity. By their importunity and wailing, it is recorded, that armies, in the moment of fubmission, have been recovered; and the stipulations of states were never so certainly fecured as when fome virgins of rank were delivered among the hostages [10]. In the blood of their women, it was conceived there was a charm and a virtue; and hence it proceeded, that, to their uncles by the mother and to their fathers, children were the objects of an equal affection and tenderness [11].

But, what evinces their confideration beyond the possibility of a doubt, is the attention they bestowed on business and affairs. They felt, as well as the noble and the warrior, the cares of the community. They watched over its interest, confidered its connection with other states, and thought of improving its policy, and extending its dominion. They went to the public councils or assemblies of their nations, heard the debates of the statesmen, and were called upon to deliver their sentiments. And, what is worthy of particular notice, this consequence in active scenes they transmitted to their posterity [12].

Such, in general, was the condition of women among our ancestors, while they were yet in their woods; and such, I should think, is in a great measure their state in every country of the globe in an age of society and manners, which knows not the cares, the corruptions, and the distinctions of property [13].

SECT. III.

Of Marriage and Modesty.

It is not to be denied, that, before the idea of a public is acknowledged, and before men have submitted to the falutary restraint of law, the disorders of promiscuous love disturb and dissigure society [1]. Yet, even in these wild and informal times, there exist parties, who, clinging together from choice and appetite, experience the happi-

ness of reciprocal attentions and kindnesses; who, in the care of their offspring, find an anxious and interesting employment, and a powerful source of attachment; who, moved by love, by friendship, by parental affection and habitude, never think of discontinuing their commerce; and who, in fine, look forward with sorrow to the fatal moment when death is to separate them.

This cohabitation or alliance, attracting attention by its decency, its pleafures, and its advantages would grow into a custom or a fashion. For, what men approve, they will imitate. this use, therefore, it feems not unreasonable to refer the inflitution of marriage; and thus, before it is known as a political confideration, it, in some measure, subsists in nature. As men increase in their numbers, they perceive the necessity of attending to an union, which is no less important to fociety than to the individual, which has in view the support of the one, and the felicity of the other. A ceremonial is invented which gives it authority and duration. The flate takes a share in the cares of the lover, and prescribes the forms that are to bind him to his mistress. while she fits the fexes for each other, leaves it to polity or law to regulate the mode of their connection.

The race of men who anciently inhabited Germany, are represented as was formerly observed, in the condition of nations; and a legislature, composed of the prince, the nobles, and the people, directed their operations. This assembly, which

which gave a fanction to military expeditions, and adjusted alliances and treaties, managed also the objects of internal concern. It extended its jurif-diction over the women as well as over the other parts of the community, and ascertained the ceremonial of marriage.

When the individual was called from the house of his father, and invested with arms; when he was advanced from being a part of a private family to be a member of the republic, he had the capacity of entering into contracts, and of fingling out the object of his affections. The parties who had agreed to unite their interests, having obtained the approbation of their parents and relations, made an interchange of gifts in their prefence. The lover gave his miftress a pair of oxen, a bridled horse, a shield, a sword, and a javelin; and she, in her turn, presented him with some arms. It was thus they expressed their attachment to each other, and their willingness to difcharge mutually the duties of the married state. This was their strongest tie; these were their mysterious rites, these their conjugal deities [2].

Nor, let it be fancied that, in this ceremonial, there was any thing humiliating to the woman. It fuited exactly the condition of a rude fociety, and must not be judged of by the ideas of a refined age. The presents, indeed, were expressive of labour and activity; but labour and activity were then no marks of reproach; and, in fact, the joined oxen, the prepared horse, the presented arms, instead of indicating the inferiority of the

bride, denoted ftrongly her equality with her hufband. They admonished her, that she was to be the partner and the companion of his toils and his cares, and that, in peace and in war, she was to fustain the same fatigues, and sto bear a part in

the same enterprises [3].

The fidelity of the married women among these nations, and the constancy and tenderness of their attachment, express also their equality with the men and their importance [4]. A ftrict observance of the marriage-bed was required of them. The crime of adultery was rare; and, in the feverity of its punishment, the respect is to be traced which was paid to modefty. It was immediate, and inflicted by the husband. He despoiled the culprit of her hair and garments, expelled her from his house before her affembled relations, and whipped her through the whole village [5]. Of the young women, the most powerful recommendation was the referve and coyness of their demeanour. A violation of modesty was never pardoned. Nor youth, nor beauty, could procure a husband. Vice was not here sported with; and, to corrupt and to be corrupted, were not termed the fashion of times [6].

In the fimplicity of their manners, they found a prefervation against vice more effectual than the laws of cultivated states. The gallantries of the young men began late; their youth was, therefore, inexhaufted. Those of the young women were not earlier. They mingled, when they were equal in age, in procerity, and strength, and had 16-

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a progeny who expressed their vigour. Disgrace attended on celibacy; and the old were honoured in proportion to the number and the merits of their descendants. A dread of pain and the care of beauty checked not generation [7]. The mother suckled her own children [8]; and, in discharging this task, anticipated the greatness and the felicity she was to acquire and to experience from their virtues, and in their gratitude [9].

It was thus the chastity of the women was guarded: It was thus their importance was confirmed. No allurements of public shows and entertainments relaxed their virtue, and infinuated into them the love of pleasure; no incitements of luxury inflamed their desires and exposed them to corruption; and what the Romans seem to have considered as particularly fatal, no acquirements of knowledge and of letters discovered to them the arts which minister to love [10].

In some of their states or communities, the respect of modesty was so great, that it was not lawful but to virgins to marry; who, without the hope or wish of second nuptials, received one husband, as they had done one body and one life, and had no thoughts or desires beyond him. It was their ambition and pride, if they survived the objects of their affection, to preserve, unfullied, the honours of widowhood; and, when the barbarians had made settlements in the provinces of Rome, when their manners had refined, and the sex were, in some measure, emancipated from this restraint, the spirit of the usage continued to ope-

rate. It augmented, as to the widow, the matrimonial fymbols; a larger dower than usual was necessary to overcome her reluctance to a second bed [11]; and, while it encouraged the king or the magistrate to exact a greater sine from her on her marriage [12], it entitled her to a higher compensation for injuries [13].

Amidst the modesty of such usages and manners, we must not look for polygamy. It was unknown to these nations; though, it is to be allowed, that a few of the chiefs or more renowned princes were surrounded with a number of wives [14]. This, however, was a matter of grandeur, not of appetite; and its source is to be found in maxims of policy, in the ambition of individuals, and in that of states. A prince, to support or extend his greatness, connected himself with different families; and the deliberations of his tribe not unfrequently pointed out to him the alliances he should court [15].

To the degrees of confanguinity and blood, concerning which nature has dictated so little, and polity so much, it is not to be conceived that they paid a scrupulous attention in their marriages [16]. It is a subject on which no infant-communities are exact. They attended to it when, having sallied from their woods, they grew refined by time, observation, and experience.

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CHAP. II.

The political Establishments of the Barbarians after they had made Conquests.

SECT. I.

The Barbaric Conquests. The Origin of the Domains of the Prince, and of Allodiality. The Lands of the Fisc. The Foundations of the Feudal Association, the Rise of the Feudal Grant, and the Genius of the Feudal System.

THE Romans, corrupted and fervile in every quarter of the empire, were unable to oppose the valour and the activity of the Germanic tribes. And, the manners of the conquerors and the conquered being effentially different, and even contradictory, the revolution produced in the condition of Europe was total and decifive [1]. thence chiefly, by an attention to the way of thinking which prevailed in their original feats. that the state is to be investigated which the barbarians exhibited on their conquests; and that the origin and the nature of those institutions are to be discovered, which, overturning in every country they invaded, the ancient forms of legiflation and government, arose on their ruins. the masterly treatise, accordingly, in which Tacitus paints, with his inimitable pencil, the manners of these nations, I must look for the foundations of this state, and these institutions.

'The members of a German nation,' fays this accomplished

accomplished historian, 'cultivate, by turns, for

' its use, an extent of land corresponding to their

'number, which is then parcelled out to indi-'viduals in proportion to their dignity: These di-

visions are the more easily ascertained, as the

' plains of Germany are extensive; and, though

' they annually occupy a new piece of ground,

' they are not exhausted in territory [2].'

This passage abounds in instruction, the most important. It informs us, that the German had no private property in land, and that it was his tribe which allowed him annually for his support a proportion of territory; that the property of the land was invested in the tribe, and that the lands dealt out to individuals returned to the public, after they had reaped the fruits of them; that, to be entitled to a partition of land from his nation, was the distinction of a citizen; and that, in confequence of this partition, he became bound to attend to its defence, and to its glory.

With these ideas, and with this practice, the Germans made conquests. In conformity, therefore, with their ancient manners, when a settlement was made in a province of the empire, the property of the land belonged to the victorious nation, and the brave laid claim to their possessions. A tract of ground was marked out for the sovereign; and, to the inferior orders of men, divisions corresponding to their importance were alloted.

But while, in their original feats, fuch partitions were annual, it was expedient that they should now be invested in the possessor. A more enlarged idea

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idea of property had been gradually unfolding itfelf [3]; and, though it was convenient to, and fuited the views of a narrow community, to take back its land, the measure was not practicable in an extensive society. Nations were no longer to The boundaries of parshift their habitations. ticular states were to be respected. The tribe ceasing to wander, the individual was also to be flationary. The lot or partition now received by him, was to continue in his possession, and to be an object of his industry. He was to take root, if I may speak so, in a particular spot. He was to bestow on it his affection; it was to feed and to enrich him with its produce. His family were to feel an interest in his estate; his sons were to fucceed to him. Heirs were to fail in the blood of the proprietor. It affected him, that the crown or a stranger should possess the subject of his toils and attentions. The powers of fale and donation came to be understood. The right of holding a landed territory with no limitation, and of disposing of it at pleafure, was known and prevailed.

The advantages of property open themselves with time. They were not observed by the German in his woods. But, when he was no longer the member of a narrow community, and felt his unimportance in the extensive kingdoms which arose on his conquests, when other professions were to be exercised beside that of the warrior, his attention turned from the public to himself. Ideas of interest pressed in upon him on every side. He was no longer to act chiesly from appetite and

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passion. He was to look forward to distant profpects. He was to busy himself for advantages which were to arrive slowly, and which were often to elude his diligence. He had passed from the empire of manners to that of laws. Riches had become a source of distinction; and his mind was to be torn with cares, anxiety, and oftentation.

When we mount up to the origin of customs, we are to be struck with their simplicity. The lot or partition to the sovereign was to constitute his domains. It was to support his splendour, to defray the expences of government, and to maintain his household. The lot of partition to the individual was to give rise to allodiality. It was the land which was free, which was named propriety, in contradistinction to tenure [4]; and, being still the mark of a citizen, it subjected him, as in Germany, to the general obligation of taking arms in defence of the community [5].

But the domains of the fovereign, and the lands of lot or partition to the people, could not exhauft all the territory of a conquest. They were principal and natural objects of attention. Yet, after their appointment, there were much extensive property, and many fair possessions. The ancient maxims of the people did not allow them to seize these by a precarious occupation. Men, who had connected the property of land with the tribe, and not with the individual, could not conceive any title in consequence of which they might arrogate possessions to humour their fancy, or to flatter

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their pride. Their ancient notions continued their operation: The community was concerned with what no man could claim. The lands, accordingly, which were affigned neither to the fovereign nor to the people, which formed not the domains of the former, nor the partitions of the latter, were the lands of the state or the Fisc. And, under this appellation, in fact, they are known in the codes of the barbarians [6].

Of the territories of this kind, the king, as representing the state, was to take the direction; and, in the grants and disposal of them, the barbarians were also to be assisted by the usages to which they had been accustomed in their woods.

A German state comprehended a fovereign, who acted for the interest of the community. chieftains, who governed in different diffricts, and the mass of the people. The sovereign and the chiefs owed their rank or estimation, some times to their birth, but oftener to their merits. The former was ambitious to support, with luftre, the honour he fuffained: The latter were fludious to deferve his favour, and to vie with one another. The people, as they were ftruck with the qualities of particular chiefs, ranged themselves under their banners, and devoted themselves to their fortunes. It was the great emulation of the chiefs to excel in the number and the courage of their retainers. This was the dignity which most attracted them, and the power they courted most. These were their ornaments in peace, and their defence in war. In the field it was infamous in the chief to

be furpassed in valour; it was infamous in the retainers not to equal the valour of the chief. To guard and to defend his person, and to ascribe to his glory all their gallant acts, was their greatest oath. The chief sought for victory; the retainer for the chief [7].

These connections, and this subordination, followed the barbaric nations into their settlements. And here we may perceive the foundations of the feudal association.

But land, which was the tie that bound together the members of a feudal kingdom, had no concern in these appearances. The chief could not confer a landed property on his retainer, because land had not yet descended to individuals. It obeyed, however, the order of nations; and the more powerful of the Gaulic and German communities had been in the practice of granting, under military service, proportions of territory to inferior tribes. Communities were anciently the vassals of communities [8]. Here then was the essence of the seudal grant.

Accustomed to this way of thinking, and to these institutions, a German state sound itself in a province of the Romans. The sovereign, from gratitude and interest, was disposed to court the chiefs who were the affociates of his victories; and the chiefs were not insensible of their importance. The retainers were proud of their prowess and their services; and the chiefs were forward to show their favour and affection to men who constituted their strength. Land had begun to be detatched from

from nations, and to be connected with individuals. And the conquest obtained was in danger from the turbulence of the times, and from new invaders.

The fituation of a German state which had acquired a settlement, produced thus the necessity of drawing closer the connection of the sovereign and the chiefs, and of the chiefs and the people. Its ancient usages concurring with this situation, pointed out the conduct to be pursued. The lands of the sist were the medium which was to operate the purpose that was so necessary. The sovereign took the direction of these; hence possessions slowed to the chiefs, under the burden of presenting themselves in arms at the call of the sovereign; hence the chiefs dealt out lands to their retainers, under the like injuction of continuing to them their aid [9]; and thus a political system was sounded, which was to act in society with infinite efficacy.

Of this fystem the intention and the spirit were national defence, and domestic independence. While it called out the inhabitant and the citizen to defend his property and to secure his tranquillity, it opposed barriers to despotism. Growing out of liberty, it was to promote the freedom of the subject. The power of the sovereign was checked by the chiefs, who were to form a regular order of nobility; and the aristocricay, or the power of the chiefs, was repressed by the retainers and vasfals, who constituting their greatness, were to attract their attention. The chief, who oppressed his retainers, was to destroy his own importance.

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It was their number and their attachment, which made him formidable to his prince and to his equals.

In this manner, I would account for the origin of the domains of the fovereign, and of allodiality; for that of fiefs [10]; and for the genius they difplayed in their earliest condition. And this short deduction may be sufficient to exhibit a general idea of the state of land among the barbaric tribes on their conquests.

SECT. II.

Of the Property of the Women. The Dower, the Morgengabe, and the Marriage-portion. The Communication to the Women of the Powers of Succession and Inheritance. The advancement of Manners.

HAVING diftinguished the property of the men, it is fit I should treat that of the women. I have observed, that, among the ancient Germans, and the case, it is to be prefumed, is fimilar in every rude community, the property of the land was invefted in the tribe or nation. His proportion of corn was allotted to the individual by the magiftrate, and corresponded to the number of his family, the degrees of his merit, and the importance of his fervice. He derived, accordingly, no fource of influence from the property of land. His chief, and almost only riches, consisted in cattle [1]; and, in those rude and remote times, the more powerful supported their hospitality and magnificence by war and violence. They collected their retainers, and committed incursion and

and plunder upon neighbouring nations; and their states discouraged not a practice which was favourable to the military virtues.

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In this fituation, it is obvious, that no property could be poffeffed by the women [2]. They had neither land nor cattle, and could demand no share of the booty procured by robbery and depredation. While they remained in their virgin state, they continued, therefore, in the families of which they were descended [3]; and, when they passed, by marriage, into other families, their husbands became bound to attend to and to provide for them. Hence the custom recorded by Tacitus: ' Dotem non uxor marito, fed uxori ma-' ritus offert.' On the death of the husband, the wife received this provision; and, it was the object of it to render her alike independent of the house she had left, and of that into which she had entered [4].

This provision consisted, doubtless, of goods; and, even in this form, it is to be conceived, it discovered itself after the Germanic conquests. When time, however, refinement, and necessity, had taught the barbarians the uses of wealth, and individuals were proud of acquisitions in land, it assumed more enlarged appearances; and property opening to the women, they acquired a source of consideration which they had not formerly known, and which was about to produce consequences of no less moment to themselves than to society.

The dos or dower came to confift in money and

in land. It was to arife out of a personal estate, out of allodial property, or out of siefs. With the widow, it remained during her life, and on her death it passed to the heirs of her husband. In general, it was regulated by his deed. In some places it was governed by custom. It was sometimes constituted by ceremonies, which grew out of the particular situation of parties [5]; and, when no private act had taken place, where no custom directed, and where no peculiarity of situation prevailed, it was fixed and ascertained by established and statutory laws [6].

Nor was it a dower only, that the husband bestowed on the wife. The morning after his nuptials, he made her a present, which was valuable in proportion to his generosity and wealth. This acquisition is known by the appellation of morgengabe [7]; and, possessing it in full property, she could convey it away during her life, allow it to pass to her heirs, or dispose of it by a deed, to take effect after death [8].

The experience of the uses of property was to produce a solicitude to posses it. While the dower and the morgengabe gave distinction to the wise, the daughter was to know the necessity of acquisitions, and to wish for them. The parent was to encourage her hopes, and to gratify his affections. He was to make her state correspond to his riches and his dignity. The refining intercourse, and the rising luxuries of society, were to demand this attention. A portion was to go from the bride to the husband. The personal fortune, to which the daughter

daughter had been a stranger in the days of Tacitus, made its appearance. And wealth in the female sex, joining itself to beauty and wit, contributed to support and extend their dominion.

The custom, in fact, of giving portions to the women, is to be traced to an early period in the laws of the Germanic and Celtic nations [9]. The present, simple and slight in its origin, grew comcomplicated and extensive. It kept pace with luxury and opulence. The dower, which before was chiefly directed by the will of the husband, became now a formal matter of treaty and agreement. The bride had a title to stipulate her claims. The riches she brought, and her rank, were duly considered; and a provision in proportion to both were allotted [10].

The portion of the daughter, like the dower and the morgengabe of the wife, was originally to confift of goods, and then of money. It was afterwards to confift of land. But, when the father was first to bestow land on the daughter, it is to be understood, that it was a part of his property. which was free or allodial. Fiefs, in their commencement, could not be enjoyed by the women. The actual fervice of the shield was required from the vaffal. To admit them to allodiality, was even a deviation from the spirit of the ancient customs of the barbarians; and, it was only in the evolution of the rights of property, that they were permitted to acquire it. A propriety then, or an allodial possession, might come to them by donation or by testament. But, by the rules of regular

regular fuccession, it was to go to the sons; and, according to law, they were only to inherit, when there were to be no sons, or when the sons were to fail [11]. The communication, however, of these privileges was a powerful addition to their importance, and was to lead to advantages still greater.

The capacity to receive allodiality by grant, by gift, by testamentary destination, and to enter to it by fuccession, in the event of the want of male heirs, or after their demife, introduced and foftered the idea of their admission to fiefs. riginal rudeness of the barbaric nations yielded to fucceffive improvements, as manners foftened, and the arts of peace were cultivated, the propenfity to add to their emolument, and to contribute to their pleasure, grew stronger. If they could not march to the field, and charge an enemy at the head of their vaffals, they might perform these offices by fubflitution. An approved warrior might discharge, for the semale possessor of a fief, the military duties to which it was subject. A right to fucceed to feudality was, by degrees acknowledged in the fex; and, when invested in the grant, they were to exert all its civil rights. Though they deputed its military command, they could fustain its honours and prerogatives. They were to hold courts, and exercise jurisdiction in ordinary fiefs; and while they attended to these cares in noble ones, they were also to affemble with the peers, in the great assemblies of the state in every country of Europe, to deliberate, to vote, and

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and to judge. Neither the military fervice incident to every fief, nor the obligation of attending the affembly of the peers or the council of the nation incident to fiefs, which were noble, could prevent the advancing condition of the women. The imbecillity of their nature, which gives a ftrength to all their other attractions, made them fulfil the first duty by delegation: The last they were long to perform in perion [12].

From the moment that fettlements were made in the territories of Rome, the women were to improve in advantages. The fubordinations of rank, which before had been chiefly difcriminated by merit, were now marked more palpably by riches and property. Modes of a diftant and respectful demeanour were invented. New sentiments of dignity and meanness became known. Difplays of elegance and luxury took place. The extent and order of established kingdoms rendered men more domestic. Less engaged with the public, the female fex engroffed more ftrongly their regard and notice. They approached them with greater reverence; they courted them with an affiduity that was more tender and anxious. The women, in their turn, learned to be more vain, more gay, and more alluring. They grew studious to please and to conquer. They loft fomewhat of the intrepidity and fierceness which before were characteristic of them. They were to affect a delicacy, and even a weaknefs. Their education was to be an object of greater attention and care. A finer fense of beauty was to arife. They were to abandon all employments which hurt the shape and deform the body. They were to exert a fancy in dress and in ornament [13]. They were to be more secluded from observation. A greater play was to be given to sentiment and anticipation. Greater reserve was to accompany the commerce of the sexes. Modesty was to take the alarm sooner [14]. Gallantry, in all its fashions, and in all its charms, was to unfold itself.

But, before I can express, with precision, the confideration they attained, and perceive, with diffinctness, the splendour which the feudal afforciation was to throw around them, I must look for the extension of fiefs, and for the sources of chivalry. Fiefs and chivalry were mutually to act upon one another. The feudal affociation was to direct and to foster chivalry; and, from chivalry, it was to receive a support or lustre. They were plants which were deffined to take root about the same period, and to sympathise in their growth, and in their decline. The feeds of them had been gathered by the barbarian in his woods; and, to whatever foil or climate his fortune was to carry him, there he was to fcatter them with profusion.

SECT. III.

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The Grandeur consequent on Property, and the Power of the Nobles. The Prerogative of private War, and its destructive Tendency. The Conversion of Allodiality into Tenure. The Extension and Universality of Fiefs.

Proud with victory, with riches, and with independence, the conquerors of the Romans separated to enjoy their possessions and their grandeur. The chiefs continued, as of old, to possess a military authority and a civil jurisdiction [1]. The prerogatives, which before they had arrogated as due to their merit, they now enjoyed as the holders of fiefs. In war they commanded their vaffals and retainers, and they judged of their disputes in times of peace. The inhabitants of their territories were foldiers and fubjects. Their caftles and household bore a refemblance to the palace, and the establishment of the sovereign. They had their officers and their courts of justice: and they exercifed the powers of punishment and mercy [2]. They even continued to exert the privilege of making war of their private authority; and the fovereigns of Europe could behold fubjects in arms, who infringed not their allegiance to the flate [3].

This right of spreading, with impunity, the tumults of war, operated as the leading source of the disorders of the middle ages, and marks expressively their condition and manners. It demands, of consequence, an attention which I must

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refuse, at present, to the other prerogatives of nobility; and, in order to discover its origin, I must glance at the beginnings of criminal jurisprudence.

In the early ages of fociety, the individual depends for protection on himfelf. There is no tribunal to which he can appeal for redrefs. He retaliates, with his own arm, the infult he has fuffered: and, if he is unable, of himself, to complete his revenge, he engages his friends to affift him [4]. Confederacies are formed for attack and for defence [5], and the members composing them are animated with the fame passions. In this perturbed state of mankind, the punishment of the offender is disproportioned to his crime. Men, frantic with rage, are unacquainted with pity or with reason. The most barbarous actions, and the most cruel disorder, are perpetrated and prevail. It is perceived, that the interest of the community is injured. Yet the right of revenge, fo dangerous in the hand of the individual, cannot, without injustice, be torn from him. It is equitable that he be fatisfied for the wrongs he has endured; but it is no less equitable, that the public do not fuffer by his violence. He is allowed, accordingly, to gratify his refentment, but, through the power of the magistrate, who, while he feels for the injuries he has received, can also look with compassion to the criminal [6].

It is not, however, to be imagined, that this improvement takes place at once, and that every individual is, in the fame moment, made to relinquish the exercise of his right of revenge. In

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rude times, the chief distinction among men arises from their personal qualities. Force of body, and vigour of mind, procure then to their possessors the greatest attention and respect. A distinguished warrior, or a chief, must be treated very disferently from the vulgar; and, though the exercise of private revenge is to be ravished from the herd of the community, it is yet to continue in the jurisdiction of the great and the powerful. What is possessed by a few, grows in time a mark of honour, and a privilege of nobility [7].

Among the Germans, in the days of Tacitus, the exercise of the right of revenge had passed, in a great measure, from the multitude. It remained, notwithstanding, with the chiefs; and they were not, on their conquests, in a disposition to renounce so splendid a distinction. They enjoyed, as a prerogative, the exercise of a right, which is destructive to order and society; and, in times when the art of legislation and government was only approaching to perfection, their claims were acknowledged. The freedom of revenge, at first unlimited, was confined; and the barons made war of their private authority [8].

It is thus that this prerogative arose which filled Europe with confusion. Nobles, haughty and independent, did not think of accepting a fine as a compensation for an infult, and submitted not their disputes to a judge. They brought them to the decision of the sword; and, their vassals and retainers, entering into their sentiments and feelings, partook of their glory and disgrace. They

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were rivals whom nothing could unite, but the enemies of the state, or the encroachments of the sovereign. To repass these they could act with cordiality. But, in their usual carriage to one another, they were sullen, jealous, and proud; and, it was their chief employment to vie in displays of magnificence, or to try their strength in hostility.

In the flate of tumult, bloodshed, and oppreffion produced by the exercise of the prerogative of private war, a most important distinction was effected between the holders of fiefs, and the poffessors of property. While, in the imperfection of government, the magistrate could not extend his power with equal force over all the orders of men in the fociety; while the weak were exposed to the infults and the passions of the strong; while nobles, haughty and independent, could legally profecute their refentments with the fword, revenge their wrongs, and gratify their avarice and cruelty, the holders of fiefs enjoyed a supreme advantage over allodial proprietors. A lord and his retainers, connected together in an intimate alliance, following the fame flandard, and adopting the same passions, could act with concert and But allodial proprietors were altogether efficacy. disqualified to defend themselves. Being distant and difengaged, they could form and support no continued or powerful confederacy; and the laws, in fact, did not permit them to enter into factions and hostilities. The violence of the times created an abfurdity. It gave to gifts under fervice, and revertible

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revertible to the grantor, a value superior to lands which were held in full property, and at the disposal of the possessor. It made necessary the conversion of propriety into tenure:

Nor was this the only confideration which had weight with the possessions of property. In every monarchy, but in one more particularly that it governed by feudal ideas, rank and pre-eminence attract chiefly the attention, and excite the ambition of individuals. The king being the fountain of honour, and distinctions slowing from his favour, the ranks of men were nicely adjusted; and, in proportion as they approached to his perfon, they exacted and received respect. this principal it naturally proceeded, that allodial proprietors were treated with contempt. Holding by no tenure, and occupying no place in the feudal arrangements, they could not draw observa-Their pride was alarmed, and they wished for the respect and the security of vasfals.

Princes, bent on the extension of fiefs, discouraged these proprietors. Their ambition, their abilities, and their prerogatives, furnished them with the greatest influence; and they employed it to give universality to a system, which was calculated to support the royal dignity and the national importance. Compositions for offences inferior to those which were allowed to a vassal, were deemed sufficient for the proprietors of allodiality. In the courts of justice they felt the disadvantages of their condition. Mortified with regal neglect, without sufficient protection from the

laws, exposed to the capricious insolence and the destructive ravages of the great, disgusted with rudeness, contempt, and indignity, they were driven into the circle of siefs. They courted the privileges and the protection which were enjoyed by vassals. They submitted their estates to tenure, selecting to themselves a superior the most agreeble, granting to him their lands, and receiving them back from him as a feudal donation [9].

In this direction of affairs, the extension of the feudal inftitutions was unavoidable. The landed property was every where changed into feudality. The empire of fiefs was universal. Even land, the great fource and medium of tenure, was to be infufficient for the multitude of those, who were pressed to be vassals, by their wants and feebleness, and who were invited to be fo by the great, in the wildness of their contentions, and amidst the enormity and mifrule created by the exercise of private war. Every matter that was an object of profit, of pleasure, of use, or of comerce, was to become the foundation of a fief. The right of judging the delicts committed in a forest, the right of the chase, or of hunting in a certain district, the tax on public roads, the privilege of efcorting merchants to a fair or a market, offices of trust and of justice, the swarms of bees in a woody territory, the profits of a mill, the fishing in a water, the allotment of a pension, and other rights and possessions in still wider deviation from the original grounds or doctrines of feudality, were to be held as fiefs [10]. The imagination was exhaufted to invent new methods of infeudation. None could be too romantic or whimfical, while strength or importance was derived from them to the grantors. The holders or vassals were bound to military service, and subject to obligations; and the chief and the eminent, in consequence of this policy, extended, supported, and maintained their public magnificence, their private consideration, and the ruinous conslicts and animosities in which they were involved by the passions of others, and their own.

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SECT. IV.

Arms, Gallantry, and Devotion. The origin of Knightbood and the Judicial Combat, of Tournaments and Blazonry. The Sources of Chivalry.

When the inhabitants of Germany fallied from their woods, and made conquests, the change of condition they experienced produced a change in their manners. Narrow communities grew into extensive kingdoms, and petty princes, and temporary leaders, were exalted into monarchs. The ideas, however, they had formerly entertained, and the customs with which they had been familiar, were neither forgotten nor neglected. The modes of thought and of action which had been displayed in their original seats, advanced with them into the territories of Rome, continued their operation and power in this new situation, and created that uniformity of appearance which Europe

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every where exhibited. Their influence on the forms of government and polity which arose, was decisive and extensive; and, it was not less efficacious and powerful on those inferior circumstances which join to constitute the system of manners, and to produce the complexion and features that distinguish ages and nations.

The inclination for war entertained by the Germanic states, the respect and importance in which they held their women, and the fentiments they had conceived of religion, did not forfake them when they had conquered. To excel in war was still their ruling ambition, and usages were still connected with arms. To the fex they still looked with affection and courtefy. And their theology was even to operate in its spirit, after its forms were decayed, and after Christianity was established. Arms, gallantry, and devotion, were to act with uncommon force; and, to the forests of Germany, we must trace those romantic institutions, which filled Europe with renown, and with fplendour; which, mingling religion with war, and piety with love, raifed up fo many warriors to contend for the palm of valour and the prize of beauty.

The passion for arms among the Germanic states was carried to extremity. It was amidst scenes of death and peril that the young were educated: It was by valour and feats of prowess that the ambitious signalized their manhood. All the honours they knew were allotted to the brave. The sword opened the path to glory. It was in the field

field that the ingenious and the noble flattered most their pride, and acquired an ascendancy. The strength of their bodies, and the vigour of their counsels, surrounded them with warriors, and listed them to command [1].

But, among these nations, when the individual felt the call of valour, and wished to try his strength against an enemy, he could not of his own authority take the lance and the javelin. The admission of their youth to the privilege of bearing arms, was a matter of too much importance to be left to chance or their own choice. A form was invented by which they were advanced to that homour.

The council of the district, or of the canton to which the candidate belonged, was assembled. His age and his qualification were inquired into; and, if he was deemed worthy of being admitted to the privileges of a soldier, a chieftain, his father, or one of his kindred, adorned him with the shield and the lance. In consequence of this solemnity, he prepared to distinguish himself; his mind opened to the cares of the public; and the domestic concerns, or the offices of the family from which he had sprung, were no longer the objects of his attention [2].

To this ceremony, so simple and so interesting, the institution of *knighthood* is indebted for its rise. The adorning the individual with arms, continued for ages to characterise his advancement to this dignity. And this rite was performed to him by his sovereign, his lord, or some approved warrior.

In conformity, also, to the manners which produced this institution, it is to be observed, that even the sons of a king presumed not to approach his person before their admission to its privileges; and the nobility kept their descendants at an equal distance. It was the road, as of old, to distinction and honour. Without the advancement to it, the most illustrious birth gave no title to personal rank [3].

Their appetite for war, and their predatory life. taught the Germans to fancy that the gods were on the fide of the valiant. Force appeared to them to be justice, and weakness to be crime[4]. When they would divine the fate of an important war, they felected a captive of the nation with whom they were at variance, and opposed to him a warrior out of their own number. To each champion they presented the arms of his country; and, according as the victory fell to the one or the other, they prognofficated their triumph or defeat. Religion interfered with arms and with valour; and the party who prevailed, could plead in his favour the interpolition of the deity. When an individual was called before the magistrate, and charged with an offence, if the evidence was not clear, he might challenge his accuser. judge ordered them to prepare for battle, made a fignal for the onset, and gave his award for the victor [5].

Nor was it only when his interest and property were at stake, that the German had recourse to his sword. He could bear no stain on his personal TO_

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fonal character. To treat him with indignity or disdain, was to offend him mortally. An affront of this kind covered him with infamy, if he forgave it [6]. The blood of his adversary could alone wipe it away; and he called upon him to vindicate his charge, or to perish.

In these proceedings, we perceive the source of the judicial combat, which spread so universally over Europe, and which is not only to be considered as a precaution of civil polity, but as an institution of honour [7].

These nations, so enamoured of valour, and so devoted to arms, courted dangers even in pastime, and sported with blood. They had shows or entertainments, in which the points of the lance and the sword urged the young and the valiant to feats of a desperate agility and boldness; and in which they learned to confirm the vigour of their minds, and the force of their bodies. Perseverance gave them expertness, expertness grace, and the applause of the surrounding multitude was the envied recompense of their audacious temerity [8].

These violent and military exercises followed them into the countries they subdued, and gave a beginning to the jousts and torneaments, which were celebrated with so unbounded a rage, which the civil power was so often to forbid, and the church so loudly to condemn; and which, resisting alike the force of religion and law, were to yield only to the progress of civility and knowledge [9].

Unacquainted

Unacquainted with any profession but that of war, disposed to it by habit, and impelled to it by ambition, the German never parted with his arms. They accompanied him to the fenatehouse, as well as to the camp, and he transacted not without them any matter of public or of private concern [10]. They were the friends of his manhood, when he rejoiced in his strength, and they attended him in his age, when he wept over his weakness. Of these, the most memorable was the Shield. To leave it behind him in battle, was to incur an extremity of difgrace, which deprived him of the benefit of his religion, and of his rank as a citizen [11]. It was the employment of his leifure to make it conspicuous. He was sedulous to diversify it with chosen colours; and, what is worthy of particular remark, the ornaments he bestowed, were in time to produce the art of blazonry and the occupation of the herald. These chosen colours were to be exchanged into reprefentations of acts of heroifm. Coats of arms were to be necessary to diffinguish from each other, warriors who were cafed completely from head to foot [12]. Christianity introduced the sign of the cross; wisdom and folly were to multiply devices; and speculative and political men, to flatter the vanity of the rich and great, were to reduce to regulation and fystem what had begun without rule or art.

It is thus I would account for knighthood, and the fingle combat, for torneaments and blazonry; institutions which were to operate with an influence influence not less important than extensive. And, in the same distant antiquity, we meet the source of that gallantry and devotion, which were to mount them to so wild a height.

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To the women, while he was yet in his woods, the German behaved with respect and observ-He was careful to deferve their approbation; and they kept alive in his mind the fire of liberty, and the fense of honour. By example, as well as exhortation, they encouraged his elevation of fentiment and his valour. When the Teutones were defeated by Marius, their women fent a deputation to that commander, to require that their chaftity might be exempted from violation, and that they might not be degraded to the condition of flaves. He refused their request; and, on approaching their encampment, he learned, that they had first stabbed their infants, and had then turned their daggers against themselves [13]. To fome German women taken in war, Caracalla having offered the alternative of being fold or put to the fword, they unanimously made choice of death. He ordered them, notwithstanding, to be led out to the market. The difgrace was infupportable; and, in this extremity, they knew how to preferve their liberty, and to die [14]. It was amidst this fierceness and independency, that gallantry and the point of honour grew and prospered. It was the reproach of these women, which, on the banks of the Rhine and the Danube, filled the coward with the bitterest forrow, and stained him with the most indelible infamy.

was their praise which communicated to the brave the liveliest joy and the most lasting reputation. Hi, says Tacitus, cuique sanctissimi testes, hi maximi laudatores [15].

These notions did not perish when the Germans had made conquests. The change of air, and of situation, did not enseeble this spirit. The women were still the judges of personal merit; and, to some distinguished semale, did the valorous knight ascribe the glory of his atchievements. Her smile and approbation, he considered as the most precious recompense; and, to obtain them, he plunged into dangers, and covered himself with dust and with blood. Ah! si ma Dame me voyoit! exclaimed the knight when persorming a feat of valour [16].

Nor were arms and the attachment to women the only features of importance in the character Religion, which, in every age of the German. and in every nation, gives rife to fo many cuftoms, mingled itself in all his transactions. adored an invisible being, to whom he ascribed infinite knowledge, justice, and power [17]. To profit by his knowledge, he applied to divination [18]; to draw advantage from his justice, he made appeals to his judgment [10]; and to acquire, in some degree, his power, he had recourse to incantation and magic [20]. The elements and the visible parts of nature, he conceived, at the same time, to be the residence of subordinate divinities, who, though the instruments only of the agency of the supreme intelligence, had a great

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great fuperiority over men, and were entitled to their attention and reverence [21]. Every tree and every fountain had its genius; the air, the woods, the water, had their spirits. When he made a step, or looked around him, he felt an impulse of awe and of devotion. His anxiety, his amazement, his curiofity, his hope, and his terror, were every moment excited. The most ample scope was afforded by this theology for the marvellous. Every thing, common as well as fingular, was imputed to fupernatural agents. Elves, fairies, sprights, magicians, dwarfs, inchanters, and giants arose [22]. But, while the lesser divinities of these nations attracted notice. it was to the supreme intelligence, that the most fincere and the most flattering worship was directed; and this god, amidst the general cares which employed him, found leifure to attend more particularly to war, and valued his votary in proportion to his courage. Thus religion and love came to inflame, and not to foften the ferocity of the German. His fword gained to him the affection of his mistress, and conciliated the favour of his deity. The last was even fond of obeying the call of the valiant; he appeared to them in battle, and fought by their fide [23]. Devotion, of consequence, was not less meritorious than love or than valour [24]. Christianity did not abolish this usage. It descended to the middle ages. And, to love God and the ladies. was the first lesson of chivalry [25].

But, though arms, gallantry, and devotion,

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produced the inflitutions of chivalry, and formed its manners, it is not to be fancied, that they operated these effects in a moment; and that, immediately on the fettlements of the barbarians. this fabric was erected. The conquerors of Rome continued to feel and to practife in its provinces, the inftincts, the passions, and the usages to which they had been accustomed in their original feats. They were to be active and ftrenuous, without perceiving the lengths to which they would be carried. They were to build, without knowing it, a most magnificent structure. Out of the impulse of their passions, the institutions of chivalry were gradually to form themselves. The passion for arms, the spirit of gallantry, and of devotion, which fo many writers pronounce to be the genuine offspring of these wild affectations, were in fact their fource; and it happened, by a natural confequence, that, for a time, the ceremonies and the usages produced by them, encouraged their importance, and added to their The steps which marked their proffrength. gress, served to foster their spirit; and, to the manners of ages, which we too often despise as rude and ignoble, not to political reflection or legislative wisdom, is that system to be ascribed, which was to act fo long and fo powerfully in fociety, and to produce infinite advantages and infinite calamity.

It is to those only who apply to rude societies the ideas of a cultivated aera, that the institutions of chivalry seem the production of an enlightened ed policy. They remember not the inexperience of dark ages, and the attachment of nations to their ancient usages. They confider not, that if an individual, in such times, were to arise of a capacity to frame schemes of legislation and government, he could not reduce them to execution. He could not mould the conceptions of states to correspond to his own. It is from no pre-conceived plan, but from circumstances which exist in real life and affairs, that legislators and politicians acquire an ascendency among men. It was the actual condition of their times, not projects suggested by philosophy and speculation, that directed the conduct of Lycurgus and Solon.

SECT. V.

The Institutions of Chivalry, the Pre-eminence of Women, Politeness, and the Point of Honour.

From the state of the seudal nobles, and the exertion of the right of private war, it resulted, that the lower orders of men were courted and attended to in an uncommon degree. The military retainers of a noble, and the inhabitants of his lands, constituted his power; and it was not his interest to neglect men who might offer their service to an enemy. They shared in his property and greatness, were slattered with his countenance, and formed the bulwark which supported him. His own sons, those of his vassals and tenants, and the ambitious youth whom his renown

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attracted from a diftance, learned under his direction the art of war, fought his battles, and entitled themselves to the honours of chivalry.

Every descendant of a gentleman, or every free-born person, had a capacity to bear arms, and to aspire to knighthood: And a long train of fervices prepared him to receive it. From his earliest years he attended the court, and refided in the caftle of his lord; and in this school he acquired all the knightly virtues. The emulation of his equals, the example and admonitions of his chief, and the company of the ladies, from whose number he was to felect the accomplished fair one, to whom he was to ascribe all his sentiments and his actions, inflamed in him the passion for war, infused into his mind a zeal for religion, and inftructed him in all the arts of a respectful gallant-From the performance of domestic duties, which were the first that employed his attention, he was called to the management of horses and of armour [1]. He then entered into greater familiarity with his lord, and accompanied him in all his hazardous expeditions. He became accustomed to perils and to toils; he acquired, by degrees, the whole science of attack and of defence; and, when his hard apprenticeship was over, he acted himself as a knight, and fought and wished for ftill feverer trials to exercise his ambition [2].

To adorn him with arms, was originally, as I remarked, the simple ceremonial which invested the warrior with knighthood. But greater pomp and solemnity came to express his advancement

to this dignity. Its importance had grown with time; the feudal inflitutions had fostered a taste for splendour; and the Christian clergy, who succeeded to the privileges of the Germanic priests, improving on their ambition, made religion interfere in its forms [3].

The candidate presented himself in a church, where he confessed his fins, and declared his repentance and remorfe. Absolution was then given him, and he passed the night in watching and pious meditation. In the morning he heard mass, and, approaching the altar, placed his fword upon it, which was returned to him, with benedictions, by the hands of the prieft. The eucharift was next administered to him; and, having been bathed, to express the purity which was necessary for the state into which he was to enter, he was dreffed in rich robes, and his fpurs and his fword were put on. He then appeared before his fovereign or his chief, and, receiving a blow upon the neck, was dubbed a knight. This parade, courtly as well as facred, was concluded with feafting and merriment [4].

The splendour, however, which accompanied the exaltation to knighthood, was proportioned to the wealth and the birth of the candidate. The same prodigal oftentation and punctilious grandeur, attended not the investiture of an inferior person, and the descendant of a seudal lord. The rich and the great displayed, on these occasions, their magnificence, their ingenuity, and their taste [5]. To furnish an aid, accordingly,

to make his eldest son a knight, was one of the benevolences which were due to a feudal proprietor from his vassals; and, during the prevalence and purity of the Gothic manners, no contributions was paid with greater cheerfulness. But while, in times of festival and peace, the admission to this honour was thus stately and ambitious, a gentle stroke with a sword was sufficient, during war, to intitle to its privileges; and, in this form, in the day of a battle, or in the hour of victory, it was usual to bestow it, in order to reward the valiant, and to encourage prowess [6].

When the warrior was promoted to knighthood, the company and tables of the fovereign and the nobles were open to him; and in times, when personal qualities were the great sources of renown and merit, no distinction was more considerable or important. It was permitted to him to wear gold, fur, and filk, and to furpass in the richness of his dress and arms. And, while his external appearance marked him out from inferior men, he was diffinguished in his own order by his enfigns-armorial, and the peculiarities of his blazonry [7]. He had certain privileges in hunting; in executions for debt, it was not lawful to take his horse and armour [8]; and in the courts of law, fines beyond the ufual proportion were awarded to compensate his wrongs. When a prifoner, and in the power of a conqueror, his rank preferved him from an unworthy or ignominious treatment. His word or promife might be relied upon with the firmest assurance. Fetters and chains

chains were only fit for the ignoble. When the chief, or the baron to whom he was more particularly attatched, required not his aid, he might enter into the fervice of another mafter. Penfions and prefents rewarded his prowefs; and he was enriched by the share he received in the spoils of an enemy, and by the ransoms of his captives [9]. His usual appearance in the field was on horse-back [10], attended by an esquire; and, if his wealth so increased, that he could afford to have knights in his train, his sovereign allowed him the use of a banner or a standard like the barons, and, like them, he exercised a civil as well as a military jurisdiction [11].

Nor did his death terminate the honours which were paid to him. The folemnity and ceremonies of his funeral, expressed his merits and the public regrets. A monument was erected to him, and the ornaments with which it was embellished, suiting his actions and history, inspired his posterity with a generous emulation. The sword which he had carried to battle, the shield which had defended his body, and the other articles of his dress and armour, became the objects of respect and veneration. The most illustrious persons courted their possession, and churches were often esteemed the only proper repositories of these attendants of his victories and valour [12].

Splendid with knighthood, of which the honour was fo great as to give dignity even to kings and to princes, the generous and the afpiring were received in every quarter with attention and civi-

lity. The gates of every palace, and of every caftle. were thrown open to them; and, in the fociety of the fair, the brave relieved the severities of war. and fed their passion for arms. Though it was the fludy of the knight to confult the defence and the glory of the flate, and to add to the flrength and the reputation of his chief, yet the praise of his mistress was the spring of his valour, and the fource of his activity. It was for her that he fought and conquered. To her all his trophies were con-Her eye lighted up in his bosom the fecrated. His enterprife, his courage, his fire of ambition. fplendour, his renown, proclaimed the power and the fame of her perfections.

The women failed not to feel their dominion. The dignity of rank and its proprieties, the pride of riches, the rivalship of beauty, unfolded their excellence and charms. Their natural modesty, the fanctity of marriage, the value of chastity, improved with time and with Christianity. The respectful intercourse they held with the knights, the adoration paid to them, the torneaments at which they presided [13], the virtues they inspired, the exploits atchieved to their honour, concurred to promote their elevation and lustre. To their enamoured votaries they seemed to be divinities; and toils, conslicts, and blood, purchased their favour and their smiles.

Placed out to general admiration, they studied to deserve it. Intent on the same of their lovers, watchful of the glory of their nation, their affections were roused; and they knew not that unquiet

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quiet indolence, which, foftening the mind, awakens the imagination and the fenses. Concerned in great affairs, they were agitated with great paffions. They prospered whatever was most noble in our nature, generosity, public virtue, humanity, prowefs. They partook in the Their foftness greatness they communicated. mingled with courage, their fenfibility with pride. With the characteristics of their own fex, they blended those of the other.

Events, important and affecting, actions of generofity, enterprife, and valour, exhibited in the course of public and private wars, were often employing their thoughts and conversation. And, in the feafons of festivity and peace, the greater and the leffer torneaments exercifed their attention and anxiety [14]. These images of war were announced with parade and ceremony. Judges were appointed to determine in them, and to maintain the laws of chivalry; and they were generally felected from among the aged knights. who came in crowds to live over again the fcenes they had acted, and to encourage and direct the intrepidity and the skill of the aspiring youth. The combatants, entering the lifts flowly, and with a grave and majestic air, pronounced aloud the names of the ladies to whom they had vowed their hearts and their homage. This privilege they had obtained at the expence of many a gallant atchievement; and they were presented by the fair ones with a riband, a bracelet, a veil, or fome detached ornament of their drefs, which H

they affixed to their helmets or their shields, and confidered as the pledges of victory [15]. Every fignal advantage won in the conflicts, was proclaimed by the instruments of the minstrels, and the voices of the heralds. Animated by the prefence of the ladies, by the fense of their former renown, and of that of their ancestors, the champions displayed the most brilliant feats of activity, address, and valour. And the ladies, entering into their agitations, felt the ardours of emulation. and the transports of glory [16]. When the torneaments were finished, the prizes were distributed with a ceremonious impartiality. The officers who had been appointed to observe every circumstance which passed in the conduct of the combatants, made their reports to the judges. The fuffrages of the spectators were collected. After ferious deliberation, in which the most celebrated personages who were present were proud to assist, the names of the conquerors were pronounced. Ladies were then chosen, who were to present to them the fymbols of victory; and, in these fortunate moments, they were permitted to imprint a kiss on the lips of these fair disposers of renown. Amidst the contending praise of the judges and the knights, the music of war, and the shouts of the people, the victors were now conducted to the palace of the prince or the noble who exhibited the torneament. There, at the feast, which concluded their triumph, they were exposed to the keen look, and the impassioned admiration of whatever was most accomplished in beauty and in arms.

arms. And in the height of a glory, in which they might well have forgot that they were mortal, they employed themselves to console the knights they had vanquished, and ascribed their success to fortune, not to valour; displaying a demeanour complacent and gentle, disarming envy by modesty, and enhancing greatness by generous sympathy and magnanimous condescen-

fion [17].

The operation of love and of glory, so powerful in the inflitutions of which I fpeak, was advanced and inspirited by religion; and principles, the most efficacious in our nature, built the fabric of the Gothic manners. Devotion had characterifed the barbarian in his woods. The god of war was propitious to the brave, the confecrated standard led to victory [18], and an immortality and a paradife took away its terrors from death [19]. Chriftianity, which looks with a fovereign contempt to every other mode of faith, which hold out to the believer the most flattering joys, and which, not contented with haunting guilt with remorfe in the present scene, lifts it from its grave to torture it with eternal pains in another existence; Christianity, I say, was more calculated, than the fuperstitions of paganism, to impress the imagination and the heart [20]. The rite of baptism taught the follower of Odin to transfer his worship to Christ. To defend Christianity with his fword and his life, became a facred vow, to which every knight was ambitious to fubmit. He confidered himself as a faint, as well as a hero; and,

on the foundation of his piety, the fuccessors of of St. Peter were to precipitate the armies of Europe upon Asia, and to commence the crusades, those memorable monuments of superstition and heroifm [21]. The lady, not less than the knight, was to feel the influence of this religion. Society was to be diffurbed with the fublime extravagance of fanatics, who were to court perfections out of the order of nature. Mortifications, aufterities, and penances, were to be meritorious in proportion to their duration and cruelty. The powers and affections of the mind and the heart, were to ficken and to languish in frivolous and fatiguing ceremonials. The eye of beauty was to fadden in monasteries and in solitude, or to light the unholy fires of a rampant priesthood. The deity was to be worshipped in abjectness and in terror, as if he contemned the works he had made, and took delight in human dejection and wretchedness.

But, while ecclefiaftics, defigning and ambitious, were to abuse mankind by the means of this new faith, it was to be beneficial to manners by the purity of its moral. While it was to guard the sexes from frailty, it invigorated the sense of justice; and, in a period of disorder and confusion, taught the knight to be strenuous in vindicating the wrongs of the injured. The weak and the oppressed, the orphan and the widow, had a particular claim to his protection. To disobey their call, was to infringe a law of chivalry, and to incur dishonour and infamy. He seemed, in some

fome measure, to be intrusted with the power of the magistrate; and the fashion of the times made him forward to employ his arm, and to spill his blood in the cause of innocence and virtue.

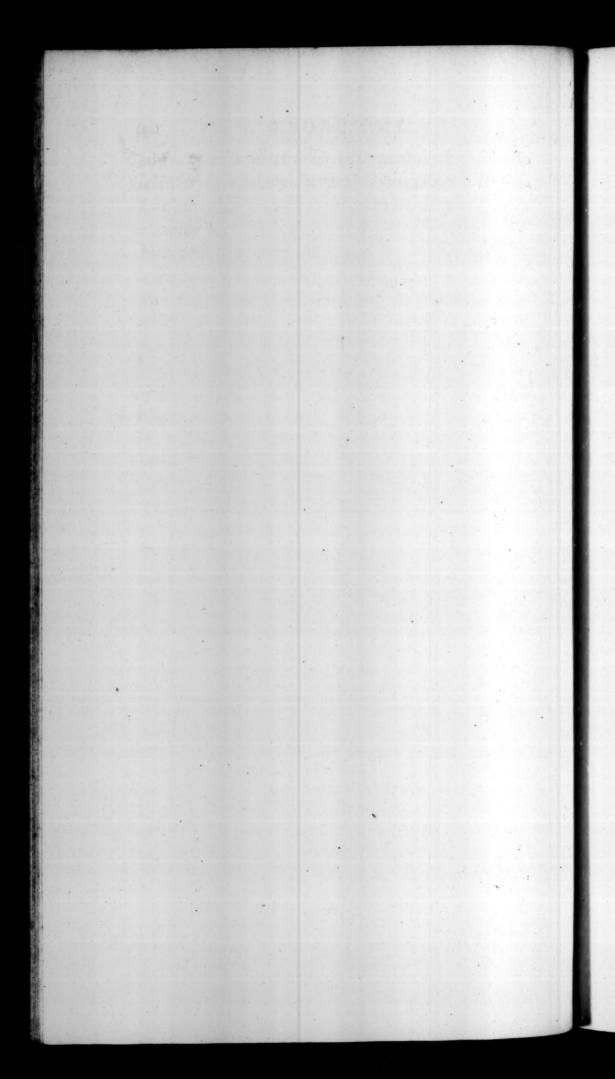
Thus war, gallantry, and devotion, conspired to form the character of the knight. And these manners, fo lofty and fo romantic, were for ages to give a fplendour to Europe, by directing the fortunes of its nations, and by producing examples of magnanimity and valour, which are unequalled in the annals of mankind. But their effects in policy and war, however conspicuous, are of little confideration, when compared with the permanent tone they communicated to fociety. The fpirit of humanity, which diftinguishes modern times in the periods of war, as well as of peace; the gallantry which prevails in our conversations and private intercourse; on our theatres, and in our public affemblies and amusements; the point of honour which corrects the violence of the paffions, by improving our delicacy, and the fense of propriety and decorum; and which, by teaching us to confider the importance of others, makes us value our own; these circumstances arose out of chivalry, and discriminate the modern from the ancient world.

The knight, while he acquired, in the company of the ladies, the graces of external behaviour, improved his natural fenfibility and tendernefs. He smoothed over the roughness of war with politeness. To be rude to a lady, or to speak to her disadvantage, was a crime which could not be pardoned

doned. He guarded her possessions from the rapacious, and maintained her reputation against flander. The uncourteous offender was driven from the fociety of the valiant; and the interpofition of the fair was often necessary to protect him from death. But the courtefy of the knight, though due in a peculiar manner to the female fex. extended itself to all the business, and intercourse of civil life. He studied a habitul elegance of manners. Politeness became a knightly virtue; it even attended him to the field of battle, and checked his paffions in the ardour of victory. The generosity and the delicate attentions he showed to the enemy he had vanquished, are a satire on the warriors of antiquity [23]. His triumphs were difgraced by no indecent joy, no brutal ferocity. Courteous and generous in the general ftrain of his conduct, refined to extravagance in his gallantry to the ladies, and the declared protector of religion and innocence, he was himself to be free from every ftain. His rank, his duties, and his cares, made him aim at the perfection of virtue. His honour was to be as incontestable as his valour. He professed the most scrupulous adherence to truth and to juffice. And, the defects of civil government, and his personal independence, gave an uncommon value and propriety to his perfonal The formalities of the fingle combat, fidelity. which were fo fcrupuloufly just, as to remove even the fuspicion of every thing unfair and dishonourable, fostered the punctilious nicety of his demeanour [24]. To utter a falsehood, was an offence of

of which the infamy was never to be effaced. The culprit was degraded from knighthood; a punishment more terrible to the warrior than death [25]. To give the lie to a knight was, of confequence. to infult him in a point the most tender; and, while he was careful to maintain his integrity. and ambitious to entitle himfelf to its honours. he was ardent and forward to defend himfelf against an improper accusation, and to punish the abuser of his name. His delicacies on this head demand respect and commendation; vet the rigid moralist has been pleased to make them the object His ridicule, however, is as abof his ridicule. furd as it is contemptuous. It applies not to the purer ages of chivalry, when honour was infeparable from virtue; and, perhaps, it is unjust in every application, but when it refers to individuals. who, being foul with meannefs, lay claim to the confideration of probity and character, and infolently appeal to their fwords to support their pretensions.

A VIEW



VIEW OF SOCIETY

IN

E U R O P E.

BOOK II.

CHAP. I.

Of the Spirit of Fiefs.

SECT. I.

A Distinction in the History of the Feudal Association. The Feudal Incidents. Their Advantages in one Situation. Their Disadvantages in another. The influence of these different Situations on Society and Manners.

The generofity of the barbaric manners was to fuffer by the growing propentity to interest. Refinement and property were to open up the selfishness of mankind; and the seudal affociation, which was originally an exercise of bounty and gratitude, was to be a source of oppression and wantonness. The fruits of love, amity, and friendship, were to become the soundation of discord and contention. The superior and the vassal, the chief and the retainer, so intimately connected, and so fondly attached, were to be hostile to each other.

other. Violence and corruption were to disfigure fociety; and scenes of splendour, liberty, and greatness, were to be succeeded by rapacity, oppression, and meanness.

The distinction of these different situations, though neglected by the antiquary, the lawyer, and the historian, is yet a matter of the greatest importance. It is, in some measure, the key to the history of modern nations. It will lead us to discover many mistakes and misapprehensions which conceal and deform topics of the highest moment and curiosity. It will overthrow many positions which have perplexed and misled the researches of the learned, and the reasonings of the speculative.

While the greatness and simplicity of those manners, which the conquerors of Rome brought with them from their woods, continued to animate their posterity, the feudal affociation was noble in its principles, and useful in its practice. The folicitudes, and the mercenary spirit which rife up with commerce, were unknown, and the fullest scope was given to nature and the passions. The actions and conduct of men were directed by fentiment and affection. In the ardour of private confederacies, the general feelings of generofity were augmented. The emotions of the heart increafed their force by confinement. And the lord and the vaffal were linked to each other in the closest connection. The arms and the zeal of his followers were the ftrength and the bulwark of the chief or the fuperior. The bounty and

and the power of the chief or the superior, were the subsistence and protection of the followers or the vassals. Their interests and their passions were the same; and a constant communication of good offices kept alive their attachments.

The vaffal, kneeling before his lord, and putting his hands into his, acknowledged him for his fuperior; 'I become,' faid he, 'your man, from ' this day forward, for life, and limb, and earth-'ly honour.' The lord, receiving him in his arms, gave him the kifs, which bestowed his countenance and favour. This rite, known under the appellation of bomage, expressed submission and reverence on the part of the vaffal, protection and defence on that of the lord. The oath of fealty, or the engagement of fidelity, was then pronounced. 'Hear this, my lord,' faid the vaffal, 'I will be faithful and loyal to you, for the tene-' ments I hold. So help me God and his faints '[1].' They were exact to obligations in which were comprised their interest, their glory, and their pleafure. In every act of civil life, in peace and in war, they found alike the uses and advantages of their union. In the castle of the lord, the vaffal added to his retinue, and proclaimed his magnificence. In his court he affifted in the administration of justice. In the field, he fought by his fide, and covered his person with his shield. On the foundation of their connection, and of that of the land or fief, which the former bestowed on the latter, a train of incidents were to arife, the unequivocal expressions of friendship I ij

friendship and habitude, the tender and affectionate fruits of an intercourse the most devoted and zealous.

While the grants of land were precarious, or for life, the superior was fond to educate in his hall the expectants of his siefs. And, when they descended to a series of heirs, or in perpetuity, he was careful, on the death of the seudator, to take the charge of his son, and his estate. The former was a hope to him of suture greatness. He protected his person, directed his education, and watched over his concerns. He selt a pride in observing his approaches to manhood, and delivered to him, on his majority, the lands of his ancestor, which he had been studious to improve. These cares were expressed in the incident of wardship.

The vassal, on entering to his fief, conscious of gratitude, and won with the attention of his lord, made him a present. This acknowledgement, so natural, and so commendable, produced the incident of relief.

Grateful for the past, and anxious for the future favour of his chief, the vassal did not incline to ally himself to a family which was hostile to him. The chief was ambitious to add to his power and splendour, by consulting the advantageous alliance of his vassal. They joined in finding out the lady whose charms and whose connections might accord with the passions of the one and the policy of the other. This attention gave establishment to the incident of marriage.

When

When the fuperior was reduced to diffress and captivity, in the course of public or of private wars, when he was in embarassiment from prodigality or waste, when he required an augmentation of means to support his grandeur, or to advance his schemes and ambition, the vassal was forward to relieve and assist him by the communication of his wealth. On this soundation there grew the incident of aid.

When the vaffal gave way to violence and diforder, or when by cowardice, treachery, or any striking delinquence, he rendered himself unworthy of his sief, the sacred ties which bound him to his lord were infringed. It was necessary to deprive him of his land, and to give it to a more honourable holder. This was the origin of the incident of escheat [2].

Amidst the contention of friendship, and the mutuality of mind which exercifed and informed the lord and the vaffal, there was experienced a condition of activity, liberty, and happiness [3]. The vaffals attended to the retainers who were immediately below them. In their turn, they were courted by the lords, whose strength they conflituted [4]. And the lords gave importance to the fovereign. A fubordination was known. which was regular, compact, and powerful. The conflituent parts interested in government [5], as well as war, were attentive, in their feveral departments, to the purposes of order and justice; and, in national operations, they acted with an union that made them formidable. Of this affociation.

ciation, political liberty was the result. And, while this fortunate state of things continued, the people, in every country of Europe, came in arms to their national assembly, or appeared in it by their representatives [6].

Such, in a more particular manner, was the condition of the Anglo-Saxon period of our history; and the people, happy alike in their individual and their politic capacity, as men and as citizens, were to bear, more reluctantly, the oppressions of the Norman times. The impression of their felicity was to descend down with vivacity, in the succession of the earlier Norman princes, and to produce the most memorable struggles for liberty.

Nor was it in England only that fuch convulfions were experienced. The fame injustice and oppressions which were to shake this nation, prevailed in every country of Europe, and gave a beginning to those contentions which were to terminate in the destruction of their ancient independence.

In this island alone, the valour and the fortune of its inhabitants were to teach freedom to revive in the midst of tyranny. The barons and the people were to inform King John of his condition and their own; and to give those lessons of instruction to his successors which they are never to forget without danger; and which a future tyrant was to confirm with his blood, when an injured nation made it to stream from the scassol to atone an infolent ambition, and violated laws.

Disorders,

Diforders, which were to be felt throughout Europe, are not to be referred entirely to the rapacity and the administration of princes. There must be a cause more comprehensive and general, to which they are chiefly to be ascribed.

The original manners which the conquerors of the Romans brought from their forests, were to fpend their force. The high fentiments which had refulted from the limited ideas of property, were to decay. The generous maxims of the feudal affociation, and the difinterested wildness of chivalry, were to fuffer with time. Property was unfolded in all its relations, and in all its uses. It became a distinction more powerful than merit, and was to alter the condition of fociety. By feparating the interests of the lord and the vassal, it was to deftroy for ever the principles of their affociation; and the incidents, which, in a better age, had fostered their friendship, were to feed their rage, and to prolong their animofity. As their confederacy had been attended with advantages and glory, their difaffection was marked with debasement, and subjection. Out of the sweets of love, a fatal bitterness was engendered. Sufferance was to fucceed to enjoyment; oppression to freedom. Society and government were to be tumultuous and disorderly; and diseases and infirmities were to threaten their decay.

In the prevalence of property and of mercenary views, the ward of the infant vaffal, which the fuperior once confidered as a facred care and an honourable trust, was to be regarded in no other

light

light than as a lucrative emolument. The acquisitions of the vasfal, which, in their state of agreement and cordiality, were a ftrength to the lord. feemed now to detract from his domains. He committed spoil on the estate which, of old, it was his pride to improve. He neglected the education of the heir. He gave repeated infults to his perfon. The relations of the vaffal were often to buy from the superior the custody of his person and his This right was more frequently to be let out to exercise the rapacity of strangers. The treasury of princes was to increase with this traffic; and fubject-fuperiors were to imitate, as well from necessity as from choice, the example of princes [7]. The heir, on his joyless majority. received the lands of his ancestor; and, while he furveyed, with a melancholy eye, his caftles, which bore the marks of neglect, and his fields, which were deformed with wafte, new grievances were to embitter his complaints, and to fwell his paffions.

The relief, which originally was no more than a present, at the pleasure of the vassal, on his entering into the fief, was confolidated into a right. An expression of gratitude was converted into a debt and a burden. The superior, before he invested the heir in his land, made an exaction from him, in which he had no rule but his rapacity. His demand was exorbitant and grievous. And if the heir delayed too long to extinguish this sine of redemption, or was unable to pay it, the superior continued his possession of the estate. Ri-

gours, so humiliating and so frantic, produced clamour, discontent, and outrage. Mitigations were to be applied to them, and to prove ineffectual. Laws were to be made against them, and to be disregarded [8].

The marriage of the vaffal, which could not be abused while their affociation was firm and their interest mutual, became a most ruinous perquisite, when their affociation was broken, and their interest discordant. The superior could give his vasfal in marriage to whom he pleafed. This right he exerted as a property. It might be purchased from him by the vaffal himself, or by a stranger. The marriage of the vaffal, without the confent of the fuperior, involved the forfeiture of the estate, or was punished with oppressive penalties. It was a rule, indeed, refulting out of their former habitudes, that the heir should not be married to his disparagement [9]. But this rule was overlooked amidst the violence of the times. The superior had no check but from his humanity, the vaffal no relief but in remonstrance.

This right, fo mortifying to the male heir, was a ftretch of still wilder oppression, and more ferocious cruelty, when exercised on the semale ward. Her hand might be tendered at the will of the superior. He might pay no attention to her affections. She was to submit at his mandate to indecent embraces, unfanctioned with love. Her beauty was to lose its sweets, and her heart its enjoyments, to feed his avarice, and to gratify his whim. Her relations were often to buy from him a privi-

lege fo frightful; and the unfeeling tyrant was to paint the horrors of its exertion, to extort his demand [10].

The aid which, in happier times, the vaffal beflowed out of benevolence to relieve the diffress. and to affift the grandeur of his lord, became a burden and a tax in the misery of their disaffection. It was arrogated as a duty and a tax. The lord called for an aid or contribution, when his eldest daughter was married, when his eldest fon was made a knight, and when, having been taken in war, his own person was to be ransomed. These were efteemed the legal occasions when exactions could be made [11]. But custom and practice authorifed the requisition of aids on pretences the most frivolous. When the crown or the lord was disposed to be oppressive, they could find a reason for an aid; and wants, not his own, were to affect every moment the fubstance of the vasfal [12].

While their confederacy was maintained, it was not on any flight foundation, that the fief could be taken from the vaffal. Cowardice, difhonour, treachery, or treason, were then the causes of escheat. The lord was not to be so offended with lesser delinquencies, as to take possession of the estate. In the times, however, of their disagreement, the causes of sorfeiture were to multiply, and he was to be active to ensorce them. Trespasses and trisles were to be sufficient grounds for the seisure of lands, of which the possession was offensive. The vasfal held a precarious and dangerous territory; and, with a mind dif-

posed

posed to be hostile to his chief, was to observe to him an attentive and punctilious demeanour. he refused too long to attend the court of the fuperior, and to give his oath of fidelity; if he happened to commit the flightest infringement of his oath; if he forefaw any misfortune that was to befal his lord, and neglected to inform him of it; if, by any act, he was to affect the credit or the reputation of his fuperior; if he fhould chance to reveal any private circumstance concerning him; if he should grant an infeudation in any other form than that in which he held his own; if he should make love to the wife or the daughter of his lord, or should carefs his fifter, while yet a virgin and unmarried; thefe, and reasons still more absurd, were to forfeit the estate to the superior, and to involve the ruin of the vaffal, and that of his family [13].

A fystem of oppression the most destructive was thus established; and, by a strange peculiarity in the history of mankind, the same incidents were to act in the production of situations the most opposite. In one period, they were to encourage liberty and happiness; in another, rapacity and savageness. Prosperity and vigour attended the feudal association in its youth. Its maturity was marked with peevishness and infirmities; and a crowd of observers, being only to see it in this condition, were to mistake its spirit, and to survey it without enlargement.

The monks, who, on the revival of letters, prefumed to chronicle the transactions of men, looked

to the past with the prejudices of their own times. They could know, and could comprehend, no manners but their own. The cultivated historian was to observe and to complain of their omissions; but, instead of labouring to supply them, he was only to arrange their materials, to hold out, with luftre, fome fuperior names, and to give his narrative the charm of picture and ornament. lawyer and the antiquary were to be equally uninstructive; while the former confines his remark to the legislation and the practice of his own age; and while the latter, amufing himself in the fearch of dates and of trifles, feeks not to advance into any general views, or to catch the spirit of those ancient periods, which provoke his fweat and his toil.

The usages and customs which the barbaric tribes brought from their woods, the remote source of all their laws, transactions, and establishments, were to be observed with a transient regard. They are, notwithstanding, the sure guides which are to direct the inquirer in the darkness and obscurity of the middle times. They point to, and evince the distinction that is now made in the history of the feudal association. And, they are to lead to other distinctions of curiosity and usefulness.

SECT. II.

A Distinction in the History of Arms and Chivalry. The Sovereign is considered as the Fountain of Honour. The Epoch of the grandeur of Chivalry. The decline of Fiefs. The remedy for their Recovery. The invention of Knight-service. The Knight's Fee. The Distinction between the Knight of Tenure and the Knight of Honour. Fiefs under Knight-service.

THE decline of the Gothic manners, while it affected fo ftrongly the feudal affociation, did not fail to extend its influence to chivalry and arms. Every poffessor of a fief conferred, of old, at his pleasure, the dignity of knighthood, and every perfon who had been admitted to knighthood, had a title to bestow it. But, when the feudal connection was infringed, and its generous principles were deftroyed, the feudatory was disposed no longer to feek out the meritorious whom he might advance to an honour, which was to be an advantage, and to reflect a glory to his fuperior. He was now the enemy, not the friend of his lord, and wished neither to add to his splendour in peace, nor to his power in war. He had grown more felfish with time, and the knowledge of property. He was to avoid, not less from interest than pasfion, the having knights in his train. The right which it had been his pride to exercise, he regarded with coldness. And, what the possessor of the fief was careless to bestow, the simple knight did not pertinaciously arrogate as a prerogative.

The

The prince or fovereign, from whom it had always been the greatest favour to receive this dignity, came, by degrees, exclusively to confer it. At the head of the state and of arms, he was to be considered as the fountain of honour.

The diffinction of knighthood, accordingly, did not immediately fall in the declenfion of the feudal affociation. It felt, indeed, the shock which feparated the interests of the superior and the vaffal; but, furviving its impulse, it was to rise, for a time, in height and splendour. When in the creation only, and at the disposal of the Prince, it was to acquire a value from his greatness. It was to be given, for a feafon, with more choice and referve, than when at the will of the possessor of the fief, and of the fimple knight. Higher feats of prowefs, the poffession of greater wealth, more illustrious descent, were to be required in its can-This was the epoch of its luftre and re-Heralds, skilful in pedigrees and armonown. ries, were to multiply. The duel was to improve in ceremony and parade; torneaments were to advance in magnificence; and, a court of chivalry, extensive in its jurisdiction, was to regulate deeds of arms, and usages of war [1].

But, while the feudal affociation in its decline was thus to contribute to the elevation of the ancient chivalry, by threatening its ruin, it was to produce effects of still higher importance, and of an operation not less universal. It was to give a new appearance to siefs, and a more regular form to the feudal militia. It was to protract the fall

of a system already ruinous, to create new diforders, and to lead to new establishments.

Though the cordiality of the lord and the vaffal was decayed, the grant of land from the former to the latter continued its obligations. The vaffal was held by a tie, which he could not renounce without forfaking his importance. property and fubfiftence faftened him to an enemy. His paffions and his duties were at variance. He might hate the person of his lord, but he was to bow to him as his fuperior. The grant of land he enjoyed, bound him to the performance of military fervice. With a cold heart, he was to buckle himself in his armour; and with reluctant steps, he was to follow the march of his chief. Of old, it had been his fondest attention to carry all his ftrength against an enemy, that he might display his own greatness, and add to the magnificence of his fuperior. He now furnished unwillingly the leaft affiftance in his power. The fervour of his former conduct was never more to advance the measures of ambition. And, in this state of things, the feudal militia was to obstruct and retard, rather than to forward the operations of princes.

In the heart of a populous kingdom, and furrounded with subjects accustomed to arms, the feudal sovereign was thus to feel an unnatural weakness. A malady, so formidable, could not but produce an anxiety for its cure. And, what is no less certain than peculiar, in the different countries countries of Europe, the same remedy was applied to it.

Fiefs, or the grants of land under military fervice, had advanced from being annual to be for life; and, from being donations for life, they were to proceed to be hereditary. It was before the establishment of this ultimate point in their progression, that the happiness of the feudal association was diffurbed. And, it was the establishment of this point which was to afford the opportunity to princes of recovering, in some degree, their greatness. While the cordiality of the vaffal was maintained, a general obligation of military fervice was fufficient to induce him to marthal all his force in the field. When this cordiality was destroyed, policy was to extort what his generofity and attachment had conferred. Lands were to be burdened with a full and exact proportion of foldiers. The giving them out in perpetuity was the feafon for annexing this bur-An expedient, natural, and not to be opposed, suggested itself. The tenure of knight-service was invented.

A portion of land, of which the grant, by the agreement of the giver and the receiver, entitled to the fervice of a foldier or a knight, was a knight's fee. An estate, of two hundred sees, furnished, of consequence, two hundred knights. Manours, baronies, and earldoms, were thus powerful, in proportion to their extensiveness. The grants from the sovereign to the nobles claimed the service of so many knights; and the sub-inseuda-

tions of the nobles enabled them to perform this fervice [2]. The tenants of the crown who were not noble, had also their fees, and furnished proportionally their knights. Grants in capite, or from the sovereign, and the sub-infeudations of vassals, called out the force of the kingdom. The prince, the nobility, and the people, were in the capacities of a general, officers and soldiers. A call to arms put the nation into motion. An army, numerous and powerful, could be assembled with expedition, exact in its arrangements, and in a state for defence and hostility [3].

Such, I conceive, was the origin and nature of the tenure of knight-fervice. And thus, in the history of the feudal institutions, there are two remarkable periods; the epoch which preceded the invention of knight-fervice, and the epoch during which it prevailed.

The knights produced by this tenure, differed most essentially from the knights of whom I have formerly spoken. But, though the train of thinking into which I have been led, points to their peculiarities with an obvious clearness, the mistakes of grave men, and an attention to perspicuity, oblige me to express their distinctive characters [4].

The one class of knights was of a high antiquity; the other was not heard of till the invention of a fee. The adorning with arms and the blow of the sword, made the act of the creation of the ancient knight; the new knight was constituted by an investment in a piece of land. The former was the member of an order of dignity which had

particular privileges and distinctions; the latter was the receiver of a feudal grant. Knighthood was an honour; knight-service a tenure. The first communicated splendour to an army; the last gave it strength and numbers. The knight of honour might serve in any station whatever; the knight of tenure was in the rank of a soldier.

It is true, at the same time, that every noble and baron were knights of tenure, as they held their lands by knight-fervice. But the number of fees they possessed, and their creation into rank. feparated them widely from the fimple individuals, to whom they gave out grants of their lands, and who were merely the knights of tenure. less true, that the sovereign, without conferring nobility, might give even a fingle fee to a tenant; and, fuch vaffals in capite of the crown, as well as the vaffals of fingle fees from a subject, were the mere knights of tenure. But the former, in respect of their holding from the crown, were to be called to take upon themselves the knighthood of honour; a condition, in which they might rife from the ranks, and be promoted to offices and command. And, as to the vaffals in capite of the crown, who had many fees, their wealth, of itself, fufficiently diffinguished them beyond the state of the mere knights of tenure. In fact, they poffeffed an authority over men who were of this laft description; for, in proportion to their lands, were the fees they gave out, and the knights they commanded [5].

It was, in this manner, that the tenure of knight

knight-service came to recover the seudal militia, at a time when it was perishing in weakness. But, though it bound more closely, in the connection of land, the superior and the vassal, by the fixedness of the service it enjoined, it could not bring back their ancient cordiality. It gave a strength and consistency to the military department of the feudal institutions; but it removed none of their civil inconveniencies and burdens. These, on the contrary, were to increase during its prevalence. It was to brace, only, with a temporary vigour, a system which no prudence or art could accommodate to refining manners.

The incidents, which had grown with the progress of fiefs, still continued their operation. Every grant by the tenure of knight-fervice, was attended with homage and fealty, and was exposed to wardship and relief, to marriage, aid, and escheat. The fuperior had still his pretentions and his claims; the vaffal was still to suffer and to complain. Promifes of the relaxation of the feudal perquifites, were to be made by princes, and to be forgotten. Legal folemnities of restraint were to be held out, and, occasionally, to produce their ef-But palliatives, feeble or forced, were not to controul the spirit of the system and the times. Fiefs, while they fustained, in the tenure of knightfervice, the grandeur of the European states were wasting with internal debilities. And the eye, in furveying their strength and magnificence, can trace the marks of an approaching weakness and decline.

CHAP. II.

The Progression of Fiefs. The Benefice, the Fief, and Allodiality. Different Opinions on these Topics. The Fruits of the Fief. Its Perpetuity. Ara of Hereditary Fiefs. Knight-service. Particular Applications to the History of England. Doubts concerning the Introduction of the Feudal Law into England. A Solution of them. Of Fiefs under William the Norman. A Distinction concerning their Condition in the Anglo-Saxon and the Anglo-Norman Times. The repeated Demands for the Revival of the Laws of Edward the Confessor. An Explanation of this Difficulty. The Introduction of Knight-service into England. Of the Number of Knight-sees there.

I HAVE endeavoured to investigate the rife and nature of the feudal grant, and the varying spirit of the feudal affociation; I have attempted to diftinguish the chivalry of arms, and the chivalry of tenure; and, I have ventured to open up the origin of Knight-fervice, which was to place the feudal institutions in their last, and most interesting fituation. It is now fit I should mark the different periods in the progression of fiefs, express, in one view, their birth, growth, and maturity, and enter into applications of the reasonings I have made. The use of my principles will thus be confirmed. And, in performing this task, I foresee I must also meet with errors and prejudices. which the talents of ingenious men have confecrated; but of which, it is the tendency to load history

history with difficulties, and to perplex science with doubt.

In the manners of the ancient Germans, I have found the fource and spirit of the feudal laws. To these, the grant of land under military service has a certain and decifive reference. Its appearance, at the will or pleasure of the grantor, was even a confequence of the limited ideas of property, and of the forms and regulations which directed the condition of land while these nations remained in their woods. They could have no conception, on their conquests, of a gift of land in perpetuity; because, of such gifts they had no knowledge. The object of the grants then made. was military fervice; their duration was the pleafure of the grantor; and the spreading of such donations through the different orders of the state, from the fovereign to the chiefs, and from the chiefs to the retainers, connected together the inhabitants of a kingdom.

But the new fituation of the barbarians on their fettlements, and the natural advancement of manners, were to communicate to them ideas of property. Their continued occupation of allodial lands, exhibiting the use and conveniencies of a permanent possession, established the notion of it. They perceived, by comparison, the disadvantages of the lands under military service, which were revokable at the call of the donor. A year, therefore, and then the life of the vassal, became the terms of the enjoyment of these gifts [1]. They grew to be successive. The

rights of the father were to be respected, and his services to be remembered in his posterity. And, in this condition of them, the superior might choose, out of the family of the seudatory, the son the most valiant, and the most acceptable to him [2]. The perpetuity of the grant was next to be understood. The prior readiness and capacity of the eldest son to do its duties, were to establish primogeniture and hereditary succession. And the sirm connection of the property in the descendants and blood of the proprietor, had produced an interest in the daughter, and, on the failure of male heirs, made the land inheritable to women.

During all this progress, the term benefice, and, during a part of it, the term fief, were to express these donations. Even after the grants of land had become hereditary, they were to continue to express them. These names, of consequence, have a reference to the same customs and the same institutions.

There are yet authors, who affirm that the benefice and the fief were different; and, when they only mean, that the benefice denoted the grant in its state of sluctuation, and the fief its condition of perpetuity, their distinction is frigid; for these were steps in the progression of the same law. But, in another aspect, their distinction is a mark of a more censurable inattention; for they ought to have known, that authentic monuments of history have repeated examples of the use of benefice and fief in expressing a gift of land under

under military service, and under a hereditary right [3].

There are writers more deceitful than these, who are not asraid to contend, that the benefice was allodiality, or the land which was free and capable of alienation. The proofs, however, which evince the connection between the words benefice and fief destroy this notion; and there are laws and records of the barbarians which make an actual distinction between the allodial and the beneficiary lands, which allude to the extensive condition of the former, and the unalienable state and the military service of the latter [4].

From the grant at discretion to the hereditary estate, benefices or fiefs were to know the rites of homage and fealty. For the vaffal, from the moment of his admission to the protection of the fuperior, was to make an acknowledgement of his fubmission and respect, and to give an assurance of his fervice and fidelity. He was also to be subject to the feudal incidents or cafualities. For, from the earliest times of the feudal grants, the fuperior was to find it necessary to educate in his hall the expectants of his fiefs, or his future vaf-To this care he was even to be led oftner, and with greater attention, when the fief was precarious, and for life, than when it was to pass down in fuccession; and the law, and not his choice, was to point out to him the infant heir. In every period of the advancement of the fief. the fuperior was to receive a prefent or relief on the grant of his land; he was to have a concern in the marriage of his vassal; he was to be affistalled by his bounty or aid; and, on his delinquence, he was to revoke or take back the donation [5].

There are writers, notwithstanding, of distinguished penetration, and of extensive learning. who are confident and certain that these things were the fruits of the perpetuity of the fief; and, I am fenfible, that the tribe of lawyers, who copy one another from generation to generation, have embalmed this fancy in their systems [6]. But it is altogether impossible, that the perpetuity of the fief could act in their creation. For, at the period it discovered itself, the feudal affociation had loft its cordiality. The fuperior and the vasfal were in a state of hostility; and, in this situation, a train of rites and incidents could not possibly be created, which suppose protection and reverence, generofity and friendship. These rites and incidents were to diffinguish those early and fortunate periods, when the interests of the superior and the vaffal were the fame, and their paffions mutual; and, though they preserved their existence down to melancholy times, and were to act as causes of oppression, they had yet softered the noblest pirnciples of our nature. After throwing a luftre on human affairs in one condition of manners, they were to degrade them in another. They were to feel the influence of refinement and felfishness; and, in this last situation, the perpetuity of the fief, which these writers consider as their

their fource, was to add a regularity to their appearance, and to encourage their feverity.

From the conquests of the barbarians, till the ninth century, siefs were in their state of sluctuation. It was about the year 877 [7] that the perpetuity of the sief was established in France. And it was known in every country of Europe in the commencement of the tenth century.

The tenure of knight-service was soon to sollow the perpetuity of the sief, and was connected with it. There is, accordingly, an instance of a knight-see in the 880 [8]. In the reign of Hugh Capet, who was raised to the throne in the year 987, this tenure extended itself over France; and, after having appeared in other nations of Europe, it was introduced into England. But, in this last country, there are peculiarities concerning the beginnings and the progress of siefs, which have been the subject of fruitless inquiries and conjectures. I must not, therefore, pass them over in silence. If my principles are just, they ought to dissipate the darkness which covers a portion of our history so memorable and so important.

Many learned writers are positive, that the Anglo-Saxons were strangers to siefs, and that these were introduced into England by William Duke of Normandy [9]. There are writers not less learned, who assirm, that siefs were not introduced into England by the Duke of Normandy, but prevailed among the Anglo-Saxons in the condition in which they were known under William [10]. Great men range themselves on each

fide of the question, and I will not detract from their merits. But, it will be permitted to me to express my fentiments.

It cannot be true, that the Saxons, who fettled in England, were strangers to siefs. For, in this case, they must have renounced the manners to which they had been accustomed in Germany. They must have yielded to views different from all the other Gothic tribes who made conquests. They must have adopted new and peculiar customs. And history has not remarked these deviations and this diffimilarity.

It cannot be true, that William the Normanintroduced fiefs into England. The introduction
of a fystem so repugnant to all the institutions
which usually govern men; which was to force
into an uncommon direction both government
and property; which was to hold out new maxims in public and in private life; which was to
affect, in a particular manner, inheritance and
estates; to give a peculiar form to justice and
courts; to change the royal palace, and the
households of gentlemen; to overturn whatever
was fixed and established in customs and usages; to
innovate all the natural modes of thinking and of
acting; could not possibly be the operation of one
man, and of one reign.

Let us not be deceived by names and by authorities. Fiefs were to run the same career in England which they had experienced in the other countries of Europe. They were to be at pleafure and annual, for life, a series of years, and in perpetuity;

perpetuity; and, in all these varieties, they were to be exhibited in the Anglo-Saxon period of our story. The hereditary grant, as well as the grant in its preceding fluctuations, was known to our Saxon ancestors. Of this, the conformity of manners which must necessarily have prevailed between the Saxons, and all the other conquering tribes of the barbarians, is a most powerful, and a satisfactory argument. Nor is it single and unsupported. History and law come in aid to analogy; and these things are proved by the spirit and text of the Anglo-Saxon laws, and by actual grants of hereditary estates under military service [11].

It is, at the same time, not less true, that the state of sies in England, under William the Norman, dissered most essentially from their condition among the Anglo-Saxons. The writers, therefore, who contend that they existed in the ages previous to Duke William, in the same form in which they appeared after his advancement to the crown, are mistaken. For, under the Anglo-Saxon princes, no mention is made of those seudal severities which were to shake the throne under William and his successors. Yet siess, under the Anglo-Saxons, in every step of their progression, must have been connected with those seudal incidents which were the sources of these severities.

This difficulty, which, on a flight observation, appears to be inexplicable, will yield to my principles. The varying spirit of the feudal affociation.

tion, which I have been careful to remark, accounts for it in a manner the most easy and the most natural. When the superior and the vasfal were friends, and their connection was warm and generous, the feudal incidents were acts of cordiality and affection. When they were enemies, and their connection was preserved, not by the commerce of the passions and the heart, but merely by the tie of land, the feudal incidents were acts of oppression and severity. During the Anglo-Saxon times, the affectionate flate of the feudal affociation prevailed. During the times of Duke William, and his immediate fuccesfors, their hoftile condition was experienced. Hence the mildness and happiness of our Saxon ancestors; hence the complaints and grievances of our Norman progenitors.

This folution of a difficulty, which has been a fruitful fource of mistake, is strongly confirmed by a peculiarity which I am now to mention, and which, in its turn, is to lead to the explication of a problem that has been alike perplexing to our antiquaries and historians.

It was from Duke William, down to King John, that the people of England were to complain loudly of the feudal feverities; and, during this long period of outrage and lamentation, it was their inceffant defire, that the laws of Edward the Confessor should be restored. It is, therefore, beyond all doubt, that the feudal severities were not heard of during the times of King Edward. The superior and the vasial were then cordial and happy

in each other. The feudal incidents were then expressions of generofity and attachment.

But Duke William, who was to acknowledge, by his laws, the freedom of the English government, which he was to infult by his administration, enacted, that the possessors of land should not be haraffed with unjust exactions and tallages [12]. He thus promifed an alleviation of the feudal feverities. And, what feems conftantly to have attended this promife, he formally reftored and confirmed the laws of the Confessor [13]. In allusion to the same severities. William Rusus engaged to abstain from illegal aids and oppressions; and, in reference to the same cuftoms of the Confessor, he became bound to govern by mild and fanctified laws [14]. Henry I. executed a celebrated charter, which contained direct mitigations of the feudal incidents. and he expressly restored and confirmed the laws of King Edward [15]. Stephen gave a charter of liberties to the barons and people; and it was its purpose to bestow his fanction on the grant of Henry, and to confirm the good laws and cuftoms of the Confessor [16]. With the same intentions, a charter of liberties was framed and granted by Henry II. [17].

These grants, though invaluable, as ample and decisive testimonials of our ancient liberties, by their perpetual and anxious retrospection to the Saxon times, could not be carried into execution, and maintained in the purity of their intentions. The altered condition of manners, and of the feudal

feudal affociation, did not permit their exercife. Notwithstanding the high and independent spirit of the English nation, which occasioned these grants, the feudal feverities were to continue. They prevailed under Duke William, under Rufus, under Henry I. under Stephen, and under Henry II. They were known under Richard I. And, in the age of King John, they became fo exorbitant and fo wild, from the eccentric and thoughtless nature of this capricious and despicable prince, that the barons and the people confederated to vindicate their liberties, and produced the magna charta, which, while it offered a limitation of the feudal rigours, was to be declaratory of the constitutional freedom that had distinguished this fortunate island from the earliest times [18].

This constant connection of the complaints of the feudal feverities, and the revival of the laws and customs of the Confessor, from the age of Duke William to King John, is a most remarkable and important peculiarity. 'What 'these laws were, of Edward the Confessor,' says Mr. Hume, 'which the English, every reign, 'during a century and a half, desired so passion- 'ately to have restored, is much disputed by antiquarians; and our ignorance of them seems 'one of the greatest desects in the ancient Eng- 'lish history [10].'

The train of thinking into which I have fallen, points, with an undubitable clearness, to the explanation of this mystery. By the laws or cus-

toms of the Confessor, that condition of felicity was expressed, which had been enjoyed during the Anglo-Saxon times, while the feudal incidents were expressions of generosity and friendship. These incidents, in the fortunate state of the feudal association, acting alike to public and private happiness, produced that equal and affectionate intercourse, of which the memory was to continue so long, and the revival to create such struggles. It was the cordiality, the equality, and the independence of this society and communication, which are sigured by the laws or customs of the Confessor, and which made them the fond objects of such lasting admiration, and such ardent wishes [20].

But, while the times of Duke William and his fuccessors were discriminated from those of the Confessor and the Anglo-Saxon princes, by the different states they displayed of the seudal association, there is another circumstance in the progress of siefs, by which they were to be distinguished more obviously.

Knight-service, which, in France, and in the other kingdoms of Europe, was introduced in the gentle gradation of manners, was about to be discovered in England, after the same manner, when the battle of Hastings facilitated the advancement of William the Norman to the crown of the Confessor. The situation of the Anglo-Saxons in an island, and the Danish invasions, had obstructed their refinement. In the memorable year 1066, when they lost King Edward, and acquired Duke William

William, they knew the perpetuity of the fief; but they were altogether strangers to knight-service and a knight's fee. The duchy of Normandy, when granted to Rollo by Charles the Simple, in the year 912, had yet experienced all the vicissitudes of fiefs. And, William, being the fixth prince in the duchy, was familiar with the most extended ideas of the feudal system. These he brought with him into England, and they were to govern and direct his conduct.

The followers of Harold having forfeited their estates, they reverted to the crown. An immense number of lordships and manours being thus in the disposal of William, he naturally gave them out after the forms of Normandy. Each grant, whether to a baron or a gentleman, was computed at fo many fees; and each fee gave the fervice To the old beneficiary tenants, he of a knight. was to renew their grants under this tenure. By degrees, all the military lands of the kingdom were to fubmit to it. And, with a view, doubtlefs, to this extension, the book of Domesday was undertaken, which was to contain an exact state of all the landed property in the kingdom. stead, therefore, of bringing fiefs into England, this prince was only to introduce the last step of their progress, the invention of the knight's-fee, or the tenure of knight's-fervice.

In fact, it is to be feen by his laws, that he introduced knight-fervice, and not fiefs. Nor let it be fancied, that this improvement was made by his fingle authority and the power of the fword.

His laws not only express its enactment in his reign, but mention that it was fanctioned with the consent of the common council of the nation. It was an act of parliament, and not the will of a defpot, that gave it validity and establishment [21].

The measure, it is to be conceived, was even highly acceptable to all orders of men. For, a few only of the benefices of the Anglo-Saxon princes being in perpetuity, the greatest proportion of the beneficiary or feudal tenants must have enjoyed their lands during life, or to a series of heirs. Now, the advancement of such grants into hereditary siefs, under knight-service, was an important advantage and acquisition. While it operated to the convenience and the grandeur of the sovereign, it bettered the property, and secured the independence of the subject.

But, while it is to be thought, that knightfervice was introduced into England in the times of Duke William, and extended over it to a confiderable degree, it is not, I believe, to be found with certainty, how many fees or knight-fervices were created in his reign. Ordericus Vitalis has, indeed, affirmed, that William created fixty thoufand knight-fervices or fees [22]. But a very different flate of this matter is given by Alexander, Archdeacon of Shrewsbury, a diligent officer of the exchequer, in the days of Richard I. King John, and Henry III. He mentions it as a tradition in his day, that, under Duke William, the number of fees in England amounted only to thirty-two thousand. Of this, however, he could find no proof in any record

record [23]. The discrepancy between this report. and the testimony of Ordericus Vitalis, is so great, that no reliance is to be given to either of them. And though Mr. Madox, Mr. Hume, Sir William Blackstone, and many writers, are disposed to adopt the relation of the latter, there feems not any convincing reason in its favour. For, independent of the tradition of the Archdeacon of Shrewsbury, which affects it fo violently, it is observable, that the knight-fees must have been in a state of confant fluctuation under Duke William; and that, in the darkness of time, it is impossible to find out the number of the last fee which was granted by The fluctuation in the number of fees continued also under his immediate successors. it was not till about the end of the reign of Henry II. that all the allodial property of England was converted into tenure [24]. And from the administration of William till this period, there must have been a gradual augmentation of the fees and the knights.

It may now be a speculation, neither incurious nor unuseful, to attend to fies in the state of their completion, and to remark the military power they established.

CHAP. III.

Of the Military Power of a Feudal Kingdom.

SECT. I.

'An Idea of the Feudal Militia.

When the feudal affociation was cordial, there existed no necessity for the knight's see. The vassals of a chief gave with pleasure their assistance. When this association was discordant, different interests actuating the superior and the vassal, art and policy were to prescribe the exact service to be performed. Nothing was to be left to friendship and cordiality. A rule, certain and definite, pointed out the duties of the vassal. This rule was the tenure of knight-service.

A duchy, barony, or earldom, were the estates possessed by the nobles; and, being divided into sees, each of these was to supply its knight. A tenant of the crown, who was not created into nobility, but enjoyed a grant of land, surnished also his knights in proportion to his sees. The nobles and the gentry of a feudal kingdom were thus its defenders and guardians. And they granted out territory to persons inferior to them in the divisions of sees, and under the burden of knights. In proportion, therefore, to the extent of its lands, there was, in every feudal state, an army or a body of militia, for its support and protection.

But, while a force, numerous and fufficient, was, in this manner, created, a care was also beflowed to hold it in readiness to take the field. The knights, who were to appear in proportion to the fees of each estate, were bound to assemble at a call, in complete armour, and in a state for action [1]. The feudal militia, of consequence, could be marched, with expedition, to defend the rights of its nation, to support its honour, or to spread its renown.

The usual arms of a knight were the shield and helmet, the coat of mail, the fword, or the lance It was, also, his duty to have a horse. For, a growing luxury, and the paffion for flow, encouraged by torneaments, had brought difcredit to the infantry, which had distinguished the barbarians in their original feats, and facilitated their victories over the Romans [3]. The horsemen were called the battle, and the fuccess of every engagement was supposed to depend upon them. No proprietor of a fee, no tenant by knight-fervice, fought on foot. The infantry confifted of men, furnished by the villages and the towns in the demesnes of the prince or the nobles. The bow and the fling were the arms of these; and though, at first, of little consideration, they were to grow more formidable [4].

During the warmth of the feudal affociation, the military fervice of the vaffal was every moment in the command of the fuperior. When their affociation was decayed, it was not to be depended on, and, when afforded, was without zeal, and

and without advantage. The invention of knightfervice, which was to recover, in some degree, the
vigour of this connection, while it ascertained the
exact duty to be rendered, was to fix its duration.
Each possessor of a see was, at his own expence,
to keep himself in the field during forty days [5].
To this obligation, the great vassals of the crown
were bound, and inferior proprietors were to submit to it. When a single battle was commonly
to decide the sates and the disputes of nations,
this portion of time was considerable and important. And, if any expediency demanded a longer duty, the prince might retain his troops, but
under the condition of giving them pay for their
extraordinary service [6].

Such was the military fystem which during a long period of time, was to uphold the power of the monarchies of Europe; a system, of which it was the admirable confequence, that those who were the proprietors of the land of a kingdom. were to defend it. They were the most interested in its welfare and tranquillity; and, while they were naturally disposed to act with union and firmness, against a foreign enemy, they were induced not less strongly to guard against domestic tyranny. Their interest and happiness, their pleafure and convenience, urged them equally to oppose invasions from abroad, intestine commotions, and the ftretches of prerogative. A ftrength, fo natural, and which could never be exhaufted; a ftrength, in which the prince was to have less authority than the nobles, and in which the power

of both was checked by the numerous class of inferior proprietors; a strength, which had directly in view the preservation of civil liberty, seems, on a slight observation, the perfection of military discipline.

But, with all its appearance of advantage, this scheme of an army was incompatible with refining manners; and, in pointing out the causes of its weakness, we may see the symptoms of refinement they are to exhibit. A double curiosity is thus to console with its charms the anxiety of inquiries that are irksome.

SECT. II.

The Inefficacy of the feudal Militia. The Fractions of a Fee. Its Members. Attempts to escape out of the Bondage of Fiess. The Fine of Alienation. Substitutions of Service. Commutations of Service for Money. The Fine for the Neglect of Service. The Tenure of Escuage. The Rise of Stipendiaries, and the Necessities of Princes. Devices and Frauds to prevent the Service of Knights, and the Payments of Escuage. The Rise of Commerce.

The portion of land termed a fee, which was the foundation of knight-service, and on which there rose the mighty fabric of the seudal strength, was no sooner invented than it was to suffer. In the frittering down of seudal property by inseudations, the practice prevailed of dividing even a fee. Thus, there were some vassals who possessed the half of a knight's fee. There were others,

who had the third, the fourth, or the fifth parts of a fee. Fractions of a fee, even to the thirtieth and the fortieth parts, were not uncommon [1]. These particulars, so perplexing to the historians of modern times, seem inconsistent with the views of knight-service, and require to be explained.

A fee could properly be divided into eight portions, and these were said to be its members. They received this appellation, because their proprietors were bound to perform the military fervice, or the original purpose of the grant. All divisions beyond these portions were improper; and their possessions, not being members of the fee, were to perform no fervice. The question still recurs, how the members of the fee, or the proprietors of the eight portions, were to perform the fervice of a knight? After the invention of knight-fervice. the usual term that the militia were to remain in the field was forty days. The eighth part of a fee. by this rule, gave a title to the eighth part of the fervice of a knight. Its proprietor, of consequence. took the field for five days, which was his proportion of the stipulated service of the fee for forty days. The possessor of the half of a knight's fee was thus to give his attendance for twenty days: And, in this manner, the other members of the fee were to ad [2].

The members of the fee had each the privileges of a manour, that is, jurisdiction, court, and usage. Hence the multiplication, of old, of little manours. The proprietors of fractions, who were not members of the fee, had not the privileges of manours, but paid fuit and attendance at the courts of the county or canton. The former were included in the fystem of siefs; the latter were thrown out of it, and their number was equally promoted by the anxious fondness of a father, who would provide for all his children, and by the ruinous prodigality of a spendthrist, who would relieve his necessities.

The fractions which were members of the fee, were to be a shock to the feudal militia, by disposing to different persons, the service which a single individual could persorm with greater skill and address. They were to be a source of weakness and disorder. The fractions which were not members of the fee, were to hasten the period of the alienation of property.

Amidst the wants created by society and intercourse, by ambition and pleasure, the vassal, who held from the crown many sees under knight-service, found it necessary, at times, to obtain from his prince the licence to let out a portion of them under a farm-rent, and not subject to military service, nor to homage, wardship, relief, and the other seudal incidents [3]. The land he retained was sufficient to produce the number of knights which were required from him. No immediate prejudice was supposed to be done to the power of the sovereign, or to the militia. And thus, entire sees, and great proportions of territory, were to escape out of the magic circle of seudality. They were to pass from chivalry and tenure, to

be subject to profits or prestations by the year. Licenses from vassals to their seudatories, created also these conversions of sees into property. As deviations from a system, they mark its decline; as attentions to property, they express the propensity to refinement and commercial manners.

Leafes, in this form were even to be made without the knowledge of superiors. The interest of the vaffal in the eftate, fo much greater and more intimate than that of the lord, was to carry him still farther. Retaining a fufficiency of land for the knights he was to furnish, he was to venture on the fale of particular fees. Encroachments made with this precaution, were to lead to encroachments more extravagant. Sales were to take place, without the refervation of a property equal to the military fervice to be performed by the vender. The attention of the lord was thus called forcibly to the acts of his vaffal. Confulting his interest and importance, he would permit of no fales that had not the fanction of his confent. The usages and doctrines of fiefs were in his favour. expedient for the necessitous vassal to act with his approbation. A bribe came to foften the feverity of the lord. The fine of alienation was established. On the payment of this fine, the vaffal might fell and barter, not only a portion of his fees, but the whole of them [4].

These peculiarities had power of themselves to destroy the seudal militia. But other causes were to concur with them. Men of rank and fortune were to yield to an increasing luxury. The love

of ease made them wish an exemption from service, and their pride produced a dislike to the mandate of a superior. The substitution of persons to perform their duties, of which the idea was first sugested by the sickness of vassals, and then familiar from the grants of sees to ecclesiastics, and their devolution to women, became a slattering expedient to the rich and the luxurious [5]. The prince could not depend on the personal attendance of the nobles and the tenants in capite. Persons, hired with a price or a pension, were often to discharge their offices, and to disgust troops, who were to submit reluctantly to their command.

Substitutions of this fort, however, though they came to be very common, were a matter of delicacy and attention. For the condition of fociety in the feudal ages permitted not, at all times, the wealthy and the noble to delegate the authority over their vassals. But when in a situation so critical, they were not without resources.

It had been usual, from the earliest times, for the superior to levy a fine from the military tenant who resused to take the field at his summons [6]. This suggested, very naturally, the commutation of service for money. A new method of tenure was thus to arise. The vassal by knightservice might convert his holding into the tenure of escuage, which, instead of exacting knights for the sees of his estate, required him to make payments to the exchequer of his prince [7].

While this aversion from service was to prevail, troops

troops were yet to be necessary. The fine, accordingly, which the sovereign demanded from the vassal who neglected to perform his duty, the payments he received by agreement from the tenants by escuage, and his interest to supply the attendance of both, were to produce, in every country of Europe, a multitude of stipendiaries.

These forces were a mixture of all nations, and consisted of men, whom poverty and debauchery had corrupted into wretchedness. They had no solicitude what cause they were to defend; and their convenient swords obeyed, at all times, the donatives of princes. They were called coterelli, from the hangers they wore, ruptarii, from the pay they received, and many of them being of the country of Brabant, the term Brabançons, or Brabantini, came to express them [8].

The introduction of these banditti into a seudal army, was the utmost violence to its nature. It offended infinitely the barons and the military tenants, that they should be called to mingle with persons so ignoble. Yet, the princes of Europe, finding the advantages of troops whom they could command to their purposes, and march at their will, were disposed to encourage them. They perceived, that they could posses no power without mercenaries; and no mercenaries were to be had without money. Hence the passion for wealth they were to discover; hence their ruinous projects to acquire it.

But, while the struggles for money, thus created, were to produce consequences distant and
O ij important

important, they ferved to destroy altogether the purposes of knight-fervice. They gave a mortal stab to the feudal militia. The feudal affociation was to be foul with difgufts, oppressions, and disorders. Time, and the devices of art, augmented the general confusion. The barons and tenants in capite by knight-fervice, when fummoned to take arms, were often to dispute the number of their fees, and the knights they should furnish. The tenants by escuage made proffers of the half or the third of the payments to which they were The conflables and the marshals of armies were ill qualified to decide concerning matters, fo delicate in their own nature, and in which an impropriety of conduct might be a prejudice to their fover igns. Doubts were to arife, not only about the fees or the knights of estates, but about the tenure by which they were held [9]. The clergy were to invent, and to encourage frauds. They taught the laity to convey to them their feudal possessions, and to receive them back as property. The fees in their own enjoyment they affected to hold in frankalmoigne, or by a tenure that gave no fervice but prayers [10]. The fubdivisions of knight-fees created perplexities that were intricate in no common degree. Fines or payments were often to be demanded, not only for the fractions which were members of the fee, but for fractions which were not members [11]. The confultation of rolls and records, inquifitions by jurors, and the examination of witnesses or evidence, required a length of time, and a trial of patience,

patience, and were not to be always satisfactory. The sovereign, in the mean time, was in haste to march against an enemy. And he felt his weakness in the diminished ranks of his army, in the abstractions of his revenue, in the turbulent service of the great vassals who obeyed his summons, in the coldness of those who acted as substitutes, in the total want of discipline and of military knowledge in inferior orders, and in the limited time which the troops were to remain in the field.

To all these causes, the rise of commerce is to be added. Its various pursuits, and its endless occupations, were to actuate the middle and the lowest classes of men, and to give the killing blow to a system, of which the ruins and decline have an interest and importance that bring back to the memory its magnificence and grandeur.

CHAP. IV.

The Fall of Chivalry as a Military Establishment. The Knights of Honour lose their Consideration. Their Numbers and Venality. Wealth becomes a more solid Title to Knighthood than personal Merit. This Dignity is connected with the Possession of a Fee. It ceases to be Honourable, and is made a Subject of Compulsion. Fines for the Exemption from Knighthood. The ancient Chivalry disappears on the Rise of Regular Armies.

All the fplendour and advantages of the ancient chivalry could not uphold the feudal militia. The dubbed knight, or the knight of ho-

nour, was to fall with the mere military tenant, or the knight of tenure. Chivalry was to decay as well as knight-fervice. When they ceafed to give a mutual aid and support, they were soon to operate in a contrary direction, and to promote the decline of each other.

In the order of dubbed knights, there were neceffarily a multitude of warriors, whose military renown had chiefly entitled them to the inveftiture of arms, and whose accomplishments were greater than their fortunes. Their knowledge in war, and the rank to which they were advanced by the ceremonial of knighthood, gave them the capacity of acting in all stations. Their poverty, fplendid, but inconvenient, made them attach themselves, in a more particular manner, to princes and nobles [1]. From these they received penfions, and, in the households of these, they enjoyed and fustained honours and offices. Men of rank were to vie with one another in their numbers and attachment. They became a part of the garniture, the magnificence, and the pride of nobility [2].

There were thus, in the declension of the feudal army, a society of men, who could supply the personal service and attendance of the luxurious and the great. A substitution of knights, in the place of the barons and vassals of the crown, was thence to prevail very generally. And, while knights were, in this manner, to wound deeply the military discipline and arrangements, they were to throw a contempt on knighthood by their

their numbers and venality. The change of manners, and the uses of wealth, had tarnished the lustre and the glories of the ancient chivalry.

In the state of its degradation, the long and hard apprenticeship to arms which, of old, had prepared the candidate for the struggles and the cares of knighthood, was forgotten. The possession of a portion of land was to be sufficient to give a title to this dignity. It was annexed to a knight's fee. The unaccomplished proprietor of a few acres was to be adorned with the sword, and to be admitted to the ceremonies of knighthood. But he could not hold its honours. They had passed away for ever. The order, which had ennobled kings, and greatness, supreme power, and the lostiest acquirements, grew to be mean and trivial.

The afpiring and the meritorious who, of old, courted and expected knighthood, with the most passionate ardour and the fondest hope, were now to avoid it with anxiety, and to receive it with disgust. An unhappy exertion of prerogative was to add to its humiliation. Princes, to uphold their armies, were to issue frequent proclamations, which required all the military tenants of the crown to appear before them on a certain day, and to be girt with the belt of knighthood [3]. Having ceased to be an object of choice, it was to be made a subject of compulsion. A single knight's fee held of the crown, being deemed an ample enough fortune to entitle to knighthood, its possessor, if unwilling to accept this dignity,

was compelled to receive it [4]. Senility, irrecoverable weakness, and loss of limbs, were the
only excuses to be admitted for his refusal. If he
had not these reasons to plead, and neglected to
take the honour of knighthood, his estate was
distrained by the officers of the revenue [5]. Men
were to buy, as a privilege, a respite and an exemption from knighthood; and princes, when
they could not recover their armies, were to fill
their exchequers [6].

In a condition, not merely of meanness, but of disgrace and calamity, the ancient chivalry could not exist long. It was worn out to extremity; and the military and regular establishments to which the defects of the feudal arrangements pointed so strongly, were to superfede its uses and advantages. It did not die, as so many writers have fancied, of the ridicule of Cervantes, but of old age, despondence, and debility.

CHAP.

CHAP. V.

The Military Arrangements which prevailed in the Declenfion of Fiefs and Chivalry. The Introduction of standing Armies.

SECT. I.

Of Mercenaries. The Evils which refult from them. The Rife of Taxations.

THE mercenaries, which were made necessary by the diforders of fiefs and chivalry, were to lead to misfortune and mifery. They were fcarcely known, when the princes of Europe invented the art of extorting the wealth of their subjects, and of employing it to oppress them. While the lands dealt out by the crown created an effectual army, foldiers gave their fervice for their poffeffions. But, when the inconveniencies and the defects of this fystem had produced mercenaries, the prince had no possessions to bestow. His domains had gone away from him in prodigalities and donations. It was yet incumbent on him to maintain his troops. Money was absolutely indispensable to him, and he was to find out meafures to procure it. These measures are interesting in themselves, and still more so in their confequences. They gave rife to taxations in Europe.

The vaffals of the crown by knight-fervice were obliged to personal attendance in wars; but, considering it as a burden, were disposed to P compound

compound for it. This was also the case with the inferior tenants. They were no less inclined to contribute their proportions to their lords, than these were to satisfy their prince. To the prince, the money of his vassals was of more advantage than their service; but agreements with each were satiguing and endless; and his mercenaries were clamorous and impatient.

An expedient presented itself, which, to all parties, gave the promise of ease and satisfaction. The prince, instead of the service that was due, and, instead of contracting with every tenant who held from him, assessed a moderate sum on every knight's see throughout the kingdom [1]. It was just that his tenants should give a fine for their attendance; and what they surnished was to go to his mercenaries.

The prerogative thus begun, was pregnant with misfortunes to subjects, and with advantages to princes, which were foreseen neither by the former nor the latter. What, at first, was a matter of expediency, and an expression of the confidence of the people, and of the discretion of the sovereign, grew into a most formidable taxation [2]. It was to be exerted with no moderation or decency. In the delirium of their greatness, the princes of Europe were to fancy, that, in extracting money from their subjects, they ought to know no rule but their ambition, their wants, and their caprice.

In a conformity with the affeffment on the eflates subject to knight-service, a tax was to be demanded demanded from the possessions of land holden in frankalmoigne and in soccase [3]. And I have already observed, that the tenants by escuage paid a stipulated fine for their sees. All the territory of a kingdom was thus to contribute to the necessities of princes, and the greatest proportion of it was to be actually exposed to their ravages.

Their rapacity was not yet to be fatisfied. The cravings of ambition, and the prodigalities of mercenaries, demanded fomething more. During the fortunate times of the feudal affociation, it had been common for the inhabitants of the cities and towns within the demesnes of the sovereign, and within those of the nobility, to express, respectively, by presents, their submission, satisfaction, and gratitude. In more unhappy times, these gifts, these fruits of generosity, were demanded as a right. These presents, the expresfions of happiness, grew into tallages and exactions, and were to denote mifery and wretchednefs. The prince, with an unblushing audacity, levied grants at his will from his cities and towns; and his example was followed by the nobles within the cities and towns within their territories. Hence the most destructive and the most calamitous of all the oppressions of the middle times [4].

Measures, so hostile to the free spirit of the Gothic governments, infringements of property so audacious, were every where to excite and to inslame the passions of the people. The princes of Europe were to contend for power, and their subjects for liberty. Struggles, the most critical

and the most serious, were sustained; and the progress of these, and the respective success of the parties in the different kingdoms of Eurpe, were to alter its governments to the forms they maintain at this hour.

In France, and in other countries, the command of the mercenaries, and the power of taxation, were finally to prevail. In England, the frantic weaknesses of King John, and the union of the nobles and the people, were to renovate the Gothic liberty, and to fet limits to princes. in states less fortunate, the kingly authority was to grow into despotism, and to debase the genius of men, while taxes, and tallages, and exactions, were to be demanded in wantonness and caprice, and a cruel tyranny to diffuse oppression and grievance, the magna charta was to command, that no prince of England should presume to levy any tax, tallage, or exaction, without the confent of the parliament [5]; and that, while the land of the kingdom was to be free from his rapacioufnefs, he should not dare to harafs its cities or towns, but that they should return to the possesfion and enjoyment of their ancient liberties [6].

The diforders of the feudal militia produced mercenaries, and the use of mercenaries gave birth to taxations. Taxations were begun to be levied, in all the states of Europe, at the will of the prince. This occasioned contentions between so-vereigns and their subjects. The victory of the kingly authority over the liberty of the people, continued in many princes the power of taxa-

tion;

tion; and this power, and the command of mercenaries, are the completion of despotism. In England, the prerogative of taxation which the prince had assumed, was wrested from him by the great charter of liberties. He was to command his mercenaries; but he was to depend for their support and their pay on the generosity of his people.

SECT. II.

The Difference between a Mercenary Soldier and a Feudal Vassal. Sovereigns find Troops by entering into Contracts with their Nobility, and with Captains by Profession. Volunteers make an Offer of their Service. Commissions of Array. The Disadvantages of these Military Schemes. The Idea and Establishment of a Standing Force. France, and other Nations, lose their Liberties. The Opposition to a Standing Force in England. The total Abolition of Fiess. The consequent Necessity of a Standing Army. The Precautions and Anxiety with which it is introduced.

The Coterelli, or banditti who wandered over Europe, and offered their fwords to the highest bidder, introduced the idea that war might be considered as a trade. The seudal proprietor sought for his land and his nation, and the prince had no title to demand his service in any dispute of his own. He drew his sword for the safety of the state, or for its honour; but he was not bound to support the quarrels of his sovereign. When the seudal prince contended with a great subject, the

feudal vaffals of the kingdom did not move indifcriminately to his call. His defenders, in this fituation, were his particular vaffals, or the tenants of his demesne. In like manner, if he declared war against a foreign state, without the consent of the great council of the nation, the majority of the feudal vaffals might refuse to obey his man-It was only in the wars, and in the quarrels approved by the nation, that they attended to his fummons [1]. But, when arms became a profession, the soldier stipulated his service for his pay. He confulted not for what end he was to fight. An implicit obedience was required from him; and his fword, though it might be employed against a natural and an active enemy, might also be turned against his native country, and give a flab to its repose and prosperity.

When, from the refuse or the vagabonds of Europe, the taking money for fervice was become familiar, the making war a traffic prevailed in every state. The idle and the profligate found a way of life, which flattered their indolence, and rapacity. The usual method of collecting an army, was now by contracts with nobles, who had authority over the loofe and diforderly inhabitants of their estates; with captains, whose address or valour could allure adventures to their flandards; and with individuals, whose poverty or choice made them offer themselves to the constables and the marshals of princes. These troops, though more obedient than the Gothic militia, were not much fuperior to them in discipline. For, at the end

end of every war, the prince, on whom they depended for pay, was in haste to disband them [2].

But, while this grew to be the usual method of raising an army, it was a law in the different nations of Europe, that all the subjects of a kingdom were bound to take arms in cases of necessity. Statutes, accordingly, or ordinances, ascertained the armour with which every person, in proportion to his riches and rank, was to provide himself, and which he was to keep constantly in his possession [3]. And thus, when dangers threatened, and sudden invasions took place, commissions of array were issued by princes, and supplies to the army called out from the provinces and counties, the villages and cities [4]. The soldiers, levied in this manner, received also the pay of the prince.

These schemes for a military power were still imperfect. The oppression of arrays was disgusting and cruel in the highest degree; and the troops they furnished were ill disposed to exert themselves, and without discipline. Mercenaries were the strength of armies; but, to collect fuch multitudes of them as were requifite for great and vigorous efforts, required an inexhauftible revenue. They had, befides, no principle of attachment or of honour. An object of terror to the people, and of fuspicion to the prince, they were employed and detefted; and when the termination of a war fet them loofe, the condition of Europe was deformed, and the greatest disorders were perpetrated. They had no certain homes, and no regular plan of fubfistence. They were at the command of the tur-

bulent

bulent and factious; they affociated into bands and companies, and were often so formidable as to maintain themselves, for a time, in opposition to the civil authority. Robberies, murders, the ravishment of women, and other atrocious crimes, were frequent [5]. The contagiousness of their example, and the enormities they produced, seemed incompatible with the existence of society; yet their use and their dismission were necessarily, in a great measure, to create this contagiousness and these enormities.

Confusions often lead to improvement, by demanding and pointing out a remedy. It was perceived, that the soldiery ought to be maintained or kept up, not only in times of war, but of peace. They would thus be preserved from maroding, and plunder, and riot; and, improving in discipline, they would act with greater firmness and efficacy.

The creation of a standing force, of which the idea was thus unfolded, was also facilitated by the rivalship which had prevailed between France and England. From the time that William Duke of Normandy had mounted the throne of England, the two kingdoms entertained a jealousy of one another. The dominions which the English were to possess on the continent, being a source of consideration to them there, became the soundation of disquiets and animosities, which were ready to break out on occasions the most trissing. Frequent wars putting to trial the strength and resources of the rival states, served to improve them in arts and in arms. Even the victories of Edward III. and Henry

Henry V. while they brought fo much strength and glory to England, were to be lessons of instruction to the other states of Europe, by discovering the danger which must result to all of them from the encroachments of a power so mighty and fo ambitious. The battles of Creffy, Poictiers, and Azincourt, which feemed to bring nothing but honour and advantage to the English, were the And, while prognoftics of their humiliation. France was apparently in a flate of desperation, it was to recover its importance and grandeur. The maid of Orleans was to aftonish with the wildness of her heroism; Charles VII. was to exert his political fagacity; Dunois, his military skill. The domestic discords of France were to cease; and the Duke of Burgundy, perceiving the pernicious confequences of uniting France to England, was to throw off his unnatural connections with the latter, and to facrifice his animofities to policy. In a word, the foreign dominions of the English were to be ravished from them. And Charles VII. instructed by the past, and apprehensive of future invasions and calamities, was to guard against them by the wisdom and the stability of his precautions.

Thus, the decay of the feudal fystem, the diforders of the mercenaries, and the political condition of France with regard to England, all conspired to illustrate the necessity of a standing force.

Having deliberated maturely on the step he was to take, Charles VII. in the year 1445, selecting out of his forces a body of cavalry, to the number of nine thousand, formed them into sisteen regu-

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lar and standing companies, under officers of experience. Three years after, encouraged by his fuccess, he established a standing infantry of Frank archers, to the number of fixteen thousand [6]. The nobility, who had been long tired and difgusted with the fatigues and the returns of military fervice, to which their tenures subjected them. and the people, who hoped, under disciplined troops, to be free from the infults and oppressions which they had known under the mercenaries, opposed not these establishments. They were struck with the advantages to be derived from them, but discerned not their dangerous and fatal tendency. No conflitutional limitations were made: no bulwarks were raifed up for the fecurity of the national independence and liberties. Succeeding princes were to add to, and improve on the regulations of Charles; and, from this period, the monarchs of France were to be in the full capacity of levying taxes at their pleafure, and of furveying, in mockery, the rights and pretenfions of their fubjects.

But, while France and other states of Europe, in consequence of these general reasons, and from the idea of their own interest, and the upholding a balance of power, were to be induced to admit of standing armies, and were thence to lose their liberties, the same causes did not operate the same effects in England. The introduction of a standing army was, indeed to be made effectual there; but at a very distant period, and on principles the most consistent with liberty. The advantages to accrue

accrue from it did not escape observation; but its dangers were still seen in the strongest light; and its establishment was opposed, till the very moment when its necessity was absolute and uncontrolable.

Till the reign of Charles II. the feudal militia, and the troops furnished by contract with nobles and captains, and by the enlisting of volunteers, continued to constitute the usual military power of England. Till the same æra, also, commissions of array were issued by princes to procure forces on extraordinary occasions. And, the termination of every war was regularly followed with the disbandment of the army.

Of these institutions, the inconveniencies, as I have faid, were infinite and enormous. They were preferable, however, to a standing army, with despotism. For regulations and policy might. in some degree, supply and alleviate their defects and abuses. The disorders, indeed, of the feudal militia, had rifen to a height, which, confidering the growing refinement of the nation, admitted not of any remedy. They were to endure, of confequence, till the extinction of tenures. But wholefome rules and enactments might depress or diminish the confusions and the oppressions which were the natural refults of the use and dismission of mercenaries; and these were not wanting [7]. It was likewife possible to give a check to the violence of princes in the issuing of commissions of array; and the spirit of the constitution, and express laws, made it fully understood, that they ought to be O ii undertaken

undertaken and executed with the greatest respect for the freedom of the subject, and in cases only of urgent danger and apparent necessity [8].

The reduction of the power of taxation affumed by princes, and the declaration of magna charta, that the people were to grant the fupplies which they thought necessary to government, had fostered the passion for independence. The constant appeals of the people to charters declaratory of their ancient freedom and privileges, and correctory of abuses, that time and the maxims of tyranny had produced, gave them an evident superiority which they might exert in all political contentions. It was eafy to discover when the fovereign was disposed to encroach; and the power the commons could oppose to him was decisive. To refuse him money, was to difarm him. Of himfelf, he could maintain no formidable army; and the people were not to lavish to him their wealth, that he might oppress them.

The schools of law, which were opened by learned men immediately after the settlement of the charters of liberty, were to diffuse widely the sundamental and free principles of the constitution [9]. The discussion of political topics was to employ even the lowest ranks of the citizens, and to engender a turbulence, which, with all its ills, must be allowed to be respectable.

The awe over parliamentary debate, which Richard II. effected by the body of four thousand archers, which he attempted to keep up, and the insolence and disorders of this band awakened, to an uncommon degree, the public jealoufy, and evinced, with decision, the dangers of a standing force [10]. The miserable state of France, under the military despotism which Charles VII. had begun, and which Louis XI. had accomplished, was to display, in all its terrors, that mode of administration which allows to the prince the command of the taxes and the army [11].

The English, astonished at the tyranny and pride of kings in other nations, were to repress them in their own. The spirit of opposition to the crown, natural to the government, and brought into exertion by the oppressive views, and the encroaching domination of princes, unfolded all their powers to the commons. During a long series of years, no standing army was permitted. It was held in the utmost detestation; and its existence was even deemed incompatible with the liberty of the subject.

In the wars between the houses of York and Lancaster, armies were frequently raised; but no standing establishment was thought of. The measure was both impolitic and violent, while the leaders of different factions were courting popularity. In the moment of peace, the soldier was lost in the citizen; and the army that conducted its commander to the throne, did not remain with him an instrument of his tyranny. It left him to the enjoyment of the legal rights of sovereignty, and was not to subvert the government. The struggle was not for a tyrant, but a king. The constitution was respected during scenes of violence.

lence and hostility, and the people felt a rising importance amidst slaughter and blood.

Henry VII. who united, in his person, the rights of the rival families, was permitted to conflitute the yeomen of the guard. But these were only for the protection of the person of the sovereign, and were not to increase to an army. They were to be a state or ornament to the crown, not a terror to the subject. The obstinacy of Charles I. and the civil wars to which it gave rise, were to confirm the ancient constitution, and to demonstrate, that neither the military power, nor the power of taxation, were prerogatives of the prince. Years and disorders were to render more solid the sabric of our government.

Yet, after the restoration of Charles II. had taken place, an event of great importance in our history, was to call, in a particular manner, for the flanding force, from which the nation was fo averse. The fystem of tenures, so decayed and fo unfuitable to refining times, haftened to extinction. Early in this reign, a flatute of infinite utility, gave a mortal blow to military tenures [12]. The fystem of fiefs, so beneficial in one period, and fo destructive in another, was overturned. The feudal strength, or militia of England, after languishing for ages in disease and weakness, received the wound of which it perished. In its place a flanding army was expedient, and could alone correspond with the majesty of the people and the dignity of the crown.

The invention of cannon and fire arms had changed

changed the art of war. Movements, evolutions, and exercises, were not to be acquired to perfection by any militia, or even by mercenaries, who were hired for a season, and dismissed at the close of a campaign. Other nations were possessed of standing armies, and of these the force was not to be opposed by troops less regular and less disciplined. Self-preservation, and the necessity of attending to the balance of power in Europe, pointed irresistibly to this establishment. Its dangers, notwithstanding, were great, and might be fatal to the prince who should attempt it.

Invited, or rather compelled, by confiderations the most powerful, Charles made the expe-He ventured to maintain, by his private authority, a standing force of five thousand foldiery, for guards and garrifons. The jealous fpirit of the people was alarmed. A measure fo unconflitutional, excited fears and apprehensions, which behoved to be confulted. Yet James II. did not scruple to augment the standing force to thirty thousand men, whom he supported from his own civil lift. The nation was on the brink of a precipice. The revolution approached. The bill of rights declared, that the fovereign was not to raife or uphold a flanding force in times of peace without the confent of the parliament. And the matured experience of fucceeding times, employed itself to devise the policy which was to make our army regular and formidable, with the least poffible inconvenience to liberty.

A flanding body of troops, as abfolutely neces-

fary, is kept up under the command of the crown, but by the authority of the legislature. The power of an act of parliament gives every year its continuance to our army; and any branch of the legislature may annually put a period to its existence, by objecting to it. The dangers of a standing force are thus prevented; its advantages are secured; and the soldiery, not living in camps, but intermingled with the people, are taught, while they respect the crown, to feel for the interests and prosperity of the nation. With these slow degrees, and with these symptoms of jealously, did a standing army become a part of our constitution.

CHAP. VI.

Of Manners and Refinement. The dissolute Conduct of the Women amidst the Decline and Oppressions of Fiefs. The general Corruption which invades Society.

While the varying situation of siefs and chivalry was to produce the most important consequences in polity and government, it was to be no less
powerful in changing the general picture of society; and the manners, which were to sigure in
their state of confusion and disorder, are a contrast
to those which attended their elevation and greatness. The romantic grandeur and virtue which
grew out of the seudal association, in its age of
cordiality and happiness, could not exist when that
cordiality and happiness were decayed. The disorders

orders of fiefs had operated on chivalry; and the deviations of both from perfection, affecting strongly the commerce of life and the condition of the female sex, were to terminate in new modes of thinking, and new systems of action,

The difastrous state of fiefs, disuniting the interests of the lord and the vasfal, gave rise to oppressions and grievances. These produced a proneness to venality and corruption. All ranks of men, from the fovereign to the flave, feemed at variance. Rapacity and infolence were to characterife the fuperior and the mafter; chicane and disaffection, the vasfal and the servant. A relaxation of morals, total and violent, was to prevail. Chivalry, lofing its renown, the purity of the knightly virtues was to be tarnished. When it fell as a military establishment, its generous manners were not to remain in vigour. The women were to lofe their value and their pride. The propenfity to vice, foftered by political diforder, and the passion for gallantry, driven to extremity by the romantic admiration which had been paid to the fex, were to engender a voluptuousness, and a luxury which, in the circle of human affairs, are usually to distinguish and to hasten the decline and the fall of nations.

Manners, too stately and pure for humanity, are not to flourish long. In the ruined states of fiefs and chivalry, there prevailed not, in the one fex, the scrupulous honour, the punctilious behaviour, and the distant adoration of beauty, which had illustrated the æra of their greatness; nor, in

the other, were there to be remarked, the cold and unconquerable chaftity, the majestic air, and the ceremonious dignity which had lifted them above nature. A gallantry, lefs magnificent, and more tender, took place. The fastidiousness and delicacies of former ages wore away. The women ceased to be idols of worship, and became objects of love. In an unreferved intercourfe, their attractions were more alluring. The times, prone to corruption, were not to refift their vivacity, their graces, their passion to please. Love feemed to become the fole business of life. The ingenious and the fentimental found a lafting interest and a bewitching occupation in the assiduities, the anxieties, and the tenderness of intrigue. The coarse and intemperate, indulging their indolence and appetite, fought the haunts, and threw themselves into the arms of proftituted beauty.

The talents which, of old, recorded the deeds of valour, and the atchievements of war, were now devoted to the fair [1]. In every country of Europe, the poet, or the Troubadour, was to confecrate to them his homage and his fongs [2]. And, to the fashions of gallantry, the rise of literature is to be ascribed. Men of genius, and men who fancied they possessed it, resorted to the courts of princes, and to the palaces of the noble; and the praise, which they knew how to lavish, got them attention and patronage. To make verses was the road to preferment. No lady was without her poet. Nor was poetry the exercise only of those

those who wished to better their fortunes. While it was to give riches and respect to the obscure, by the connections it was to gain to them, it was to be an ornament and an honour to the great. Princes and barons, as well as knights and gentlemen, found it the furest recommendation to their mistresses [3]. They fung their charms, their difdain, and their rigours. Even the artificial tenderness of the poet often grew into reality; and the fair one, who, at first, only listened to praise, was to yield to passion. The adulation paid to beauty, disposed it to approve; complaints led to pity; pity to love. The enchantment of perpetual flatteries, of proftrations respectful and pasfionate, of vows repeated with ardour, of fighs ever meant to allure, corrupted a fex, of which the fenfibilities are so exquisite. The rite of marriage, formerly fo fanctimonious, was only courted to be abused [4]. The pride of condition, more powerful than modefty, was, indeed, a check to the virgin; but she was to wait reluctantly the moment, when her coyness and timidities, instead of rebuking the passions, were to be a zest to them. All the fopperies of fancy were exhibited. all the labyrinths of love were explored. A licentiousness, which knew no restraint from principle, was rendered more feducing by the decorums and decorations of a fantastic gallantry [5].

Religion, which must ever mix in human affairs, is oftner to debase than to enlighten. It is, for the most part, a mass of superstitions, which encourage the weaknesses of mankind. This was

the case with Christianity in the darkness of the middle times. The votaries of beauty did not fcruple to address the Deity to soften its obstinacy. In the heat of intrigue they invoked the Trinity and the faints for fuccess [6]. Religion was employed to give a poignancy to the diforders of proflitution and luft. The rich were to have houses of debauch in the form of monasteries, confifting of many cells or apartments, and under the government of abbeffes [7]. The profaness of gallantry disturbed and deformed even the meditations of the most pious. The devotee was to feek a miftress in heaven. He was to look up to the virgin with the eyes of a lover, and to contemplate the beauties of her person, and the graces of her carriage [8]. What is more extravagant, the felicities of futurity feemed a trifle unworthy of acceptance, without the contacts and the vanities of an irreverent courtefy. 'I ' would not,' faid a Troubadour, ' be in Paradife, but on the condition of making love to her ' whom I adore [o].'

The vices and example of the clergy added to the general contagion. They were to exceed not only in superb living, and in the luxuries of the table, but in the pastimes and the gratifications of illicit love [10]. It was in vain that laws were made to prohibit them from entertaining, in their houses 'any virgins dedicated to God.' The arts of the Popes to tear them from their women, would fill volumes. No ecclesiastic was without his concubines [11]. The sins of the saint were gross

gross and comfortable. In contempt of all decency, they were even to educate publicly the fruits of their amours. Rampant and dissolute, they preached religion, and were a disgrace to it; virtue and they were in haste to contemn it; another world and they were immersed in the enjoyments of the present.

An universal corruption diffused itself. To be deep in debauch, and successful with the ladies, were certain marks of worth. They were parts of the eminence to which the deserving were to aspire. To be amorous and deceitful, were not less meritorious than to be brave and witty. There was exhibited a strange picture of sierceness and effeminacy, oppression and politeness, impiety and devotion.

The age, in which so many armies, inflamed with zeal, were to fight for the recovery and posfession of the holy sepulchre, was remarkable for the most criminal depravity. The pilgrims and crusaders exported the vices of Europe, and imported those of Asia. Saint Louis, during his pious and memorable expedition, could not prevent the most open licentiousness and disorder. He found houses of prostitution at the doors of his tent [12]. His character, his example, and his precautions, were restraints, inessectual and fruitless.

While the ladies of rank were to be befieged in form, to be pursued in all the windings of affectation and caprice, and to oppose to their impatient lovers all the obstacles of a delicacy pretended or real, the women of inferior condition were

to be approached with familiarity. It even appears to have been common for husbands to make a traffic of the chaftity of their wives, though fevere regulations were enacted to repress this practice [13]. The offices of the laundress and the milliner, being yet no particular professions, there were in the habitations and the palaces of the rich, apartments for women, who, while they performed the fervices peculiar to these, were also debauched to impurity, and subservient to lust [14]. Turisdiction, being yet ambulatory, and kings, making frequent progreffes through their dominions, it was usual for profitutes to follow the court; and officers were appointed to keep them in subjection and order [15]. To be marshal of the King's whores in particular places and districts, was an honour and a dignity [16].

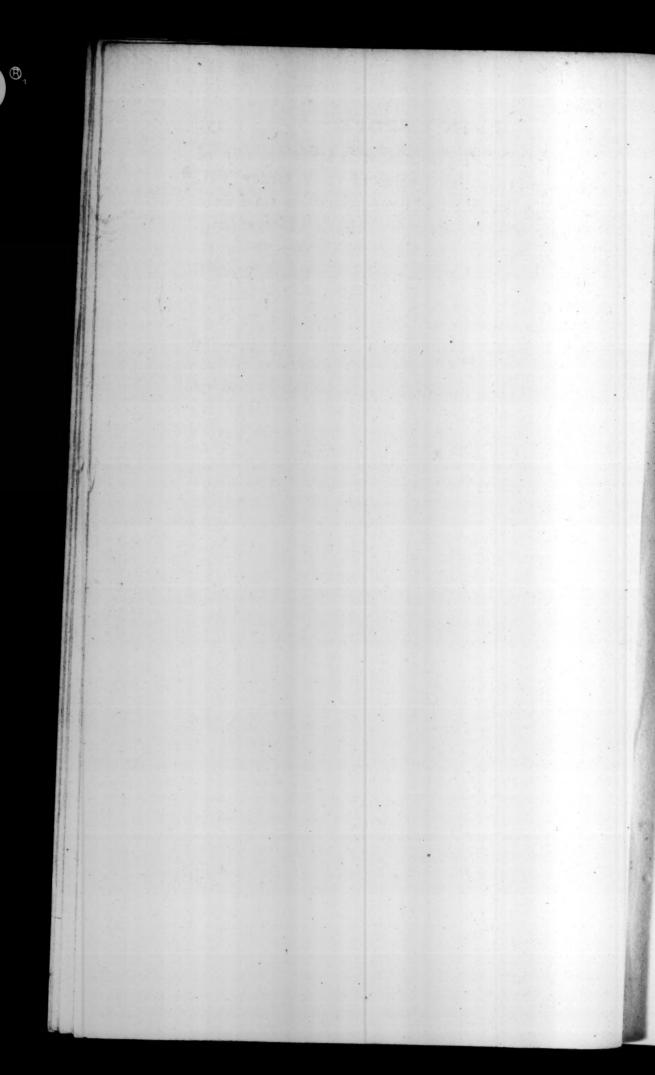
To this degeneracy and profaneness, I am inclined to trace the law, which, in the declining condition of fiefs, made it a forfeiture of the estate, for the vassal to debauch the sister, the daughter, or the wife of his superior [17].

In the greater towns, there were women who lived openly by profitution, exercifing it as a profession. There were even whole streets which were inhabited by them. In Paris and in London, the number of public brothels was incredible. In the latter, in the days of Richard II. a Lord Mayor imported strumpets from Flanders, and kept stewhouses, where the dainty and the squeamish were to trade in this foreign merchandize [18]. Bordelloes or stews were permitted and sanctioned by

the authority of government in every country of Europe [19]. To twelve of these Henry VII. gave his license; and signs painted on their walls distinguished them, and invited the passenger [20]. So general was the licentiousness which spread itself, that the proprietors of houses found it necessary to let them out under the express condition, that the lessee should keep and harbour no common women [21]. Henry VIII. who approved not love in any form, but that of matrimony, suppressed many stew-houses in Southwark, and ordained, that prostitutes should not receive the rites of the church while they lived, nor have a Christian burial, when they were dead [22].

Such were the manners which were produced by the oppressions and disorders of siefs and chivalry. And thus, notwithstanding what many writers have afferted, I am entitled to conclude, that the spirit of chivalry was not uniform any more than that of siefs; and that, at different periods, its manners were opposite and contradictory.

AUTHO-



AUTHORITIES, CONTROVERSY,

AND

REMARKS.

BOOK I.

CHAP. I.

SECT. I.

[1] 'AGRI, pro numero cultorum, ab universis ' per vices occupantur, quos mox inter fe fecund-' um dignationem partiuntur.' " The lands are oc-" cupied by turns, in allotments proportional to "the number of cultivators; and are afterwards " parcelled out among the individuals of the dif-" trict, in shares according to the rank and condi-"tion of each person." Tacit. de Mor. Germ. c. 26. ' Privati ac separati agri apud eos nihil est.' " No " one has a determinate portion of land his own " peculiar property." Cafar de bell. Gall. lib. 4. c. 1. The German tribes passed annually from the fields they had cultivated. 'Arva per annos mu-' tant.' " The arable lands are annually changed." Tacit de Mor. Germ. c. 26. ' Neque longius anno * remanere uno in loco incolendi causa licet.' " is

"is unlawful to continue longer than one year upon the fame fpot for the purpose of cultivation." Cæsar de bell. Gall. lib. 4. c. 1. The condition of property among these nations I have treated in another work. Historical Dissert. concerning the Antiquity of the English Constitution, Part 1.

Similar diffinctions prevail in all barbarous nations, and give rife to a fimilar way of thinking.

- ' Formerly,' fays Mr. Adair, ' the Indian law obli-
- ' ged every town to work together in one body, in
- ' fowing or planting their crops; though their fields
- ' are divided by proper marks, and their harvest is
- ' gathered separately. The Cherokee and Mus-
- 'kohge still observe that old custom.' History of the American Indians.

Among the Indians of Peru, it is faid, that the territory occupied was the property of the state, and was regulated by the magistrate; and that, when individuals were permitted to possess particular spots, these, in default of male issue, returned to the community. Royal commentaries of Peru, book 5. ch. 1. and 3.

It feems to have arisen out of the old custom, which considered land as the property of nations, that in Europe, when all heirs failed, the property of the individual went to the fife, or to the fovereign as representing the state.

'Quod si maritus et mulier sine herede mortui 'fuerint, et nullus usque ad septimum gradum de

' propinquis et quibuscunque parentibus invenitur

' tunc res fiscus adquirat.' " But if a husband and

" wife shall die without an heir, and there is none

" found to the feventh degree of kin among their

" kinfmen and relations, then the fife acquires their

" property. LL. Baivvar. tit. 14. l. 9.

' Fiscus tunc agat, quando nec parentum, nec filiorum, nec nepotum, nec agnatorum, nec cog-

' natorum, nec uxoris et mariti, quae fuccedat,

' extare comperitur persona, secundum veterum con-

' stituta.' Edictum Theoderici Regis, c. 24.

"When there is no person found to exist among the parents, the sons, the grandsons, the kindred by the male side or other relations of the wife and husband who may succeed, then, the fisc shall act according to the regulations of our ancestors."

The fields in pasture belonged to the community or tribe, as well as the fields in tillage. The moment that the flocks or herds of one individual left them, they might be possessed or occupied by those of another; and so on in succession. It was under the influence of such manners that Abraham said to Lot, 'Is not the whole land before 'thee? separate thyself, I pray thee, from me; 'if thou wilt take the left-hand, then I will go 'to the right; or, if thou depart to the right-hand, 'then I will go to the left.' Genesis, Ch. xii. v. 9. And to this condition of society the Roman poets make frequent allusions, though they do not seem to have understood it with accuracy*.

* Ante Jovem nulli subigebant arva coloni, Nec arare quidem, aut partiri limite campum

When the territory of a tribe or nation ceased to be its property, and individuals acquired particular spots or estates, which they cultivated for their use, and transmitted to their posterity, it was a confequence of the old manners, that thefe improvements were regarded as the usurpations of the powerful on the weak; and historians affure us, that it happened both in Greece and Italy, that the land-marks which had been fixed to diffinguish the boundaries of property, were frequently removed or deftroyed. It feemed an enchroachment on the rights of the people, that lands, which, of old, pastured indifferently the cattle of successive occupiers, should be allotted to the use and convenience only of private men. It was, accordingly, not merely necessary to make laws to prevent the violation of private rights; but, what is curious in an uncommon degree, even the termini or landmarks, that they might remain unremoved for the prefervation

Fas erat; in medium quaerebant; ipfaque tellus

Omnia liberius nullo poscente ferebat.

Virgit.

- " E'er this, no peafant vex'd the peaceful ground;
- " Which only turfs and greens for altars found:
- " No fences parted fields, nor marks nor bounds
- " Distinguish'd acres of litigious grounds:
- " But all was common, and the fruitful earth
- " Was free to give her unexacted birth." DAYDEM

Non domus ulla fores habuit, non fixus in agris

Qui regeret certis finibus arva lapis.

Tibul.

"No house then had doors, nor was there a stone fixed in the ground to regulate the fields by certain boundaries.

preservation and the separation of property, were exalted into divinities. Thus, religion, as well as policy, held out its terrors to force mankind to learn the art of appropriation, and to accept of power and riches.

Among the Celtic and German barbarians, the defacing and the removing of land-marks were also common delinquencies; and, in the punishment of them, much severity was exercised.

'Si quis limites complantaverit, aut terminos fixos fuerit aufus evellere, fi ingenuus est, per fingula signa vel notas vicenos vi. solid. componet; si servus est, per singula signa L. slagella suscipiat.' "If any one has transplanted boundaries, or has dared to tear up sixed land-marks, if he is a freeman, for every mark or boundary he shall compound by paying six shillings; if he is a slave, he shall for each receive sifty lashes." LL. Baivvar. tit. xi. l. 1. et 2.

'Si quis liber homo terminum antiquum corrupe'rit, aut exterminaverit, et probatum fuerit, fit
'culpabilis lxxx. fol. medium regi, et medium in
'cujus fine fuerit terminus. Si quis fervus alie'nus terminum antiquum ruperit, aut exterminave'rit, mortis incurrat periculum, aut fol. xl. redi'matur.' "If any freeman has broke down or
"removed an old land-mark, and it shall be prov"ed, he shall be liable to a fine of eighty shil"lings, one half to the king, and one half to the
"proprietor of the land-mark. If any slave of
"another person has broke down or removed an
"old land-mark, he shall suffer death, or be
"redeemable

" redeemable for fixty shillings." LL. Longobard, lib. 1. tit. 26. l. 1. et 2. See farther LL. Wisigoth, lib. 10. tit. 3. De terminis et limitibus.

Boundaries and limits are also an article in the code of Gentoo laws; and the regulations it holds out on this subject are, perhaps, a proof, that the mass of the inhabitants of Hindostan, at the period of their enactment, had not lost the idea of times which preceded the discovery of the advantages of a landed property. Gode of Gentoo laws, ch. 12.

- [2] 'Dominum ac fervum nullis educationis 'deliciis dignoscas. Inter eadem pecora; in ea'dem humo degunt; donec aetas separet ingenu'os, virtus agnoscat.' "The master and slave are
 "not to be distinguished by any delicacy in edu"cation. They lie together amidst the same cat"tle, upon the same ground, till age separates,
 "and valour marks out the free-born." Tacit. de.
 Mor. Germ. c. 20.

besides that repose is unsuitable to their tem"pers, toils and perils afford them better oppor"tunities of distinction. Nor are
"they so easily persuaded to cultivate the earth,
"and await the produce of the seasons, as to chal"lenge the soe, and hazard wounds; for they
"think it base and spiritless to earn by sweat,
"what they might purchase with blood." Tacit.

de Mor. Germ. c. 14.

[4] Tacit. de Mor. Germ. c. 15. 21. 24. Struvius, Corpus historiae Germanicae, prolegom.

[5] 'Convictibus et hospitiis non alia gens ef-' fusius indulget. Quemcumque mortalium arce-' re tecto, nefas habetur, pro fortuna quisque ap-' paratis epulis excipit. Cum defecere, qui modo ' hospes fuerat, monstrator hospitii et comes, prox-' imam domum non invitati adeunt. Nec intereft. Pari humanitate accipiuntur. Notum ig-' notumque, quantum ad jus hospitii, nemo dis-'cernit. Abeunti, fi quid poposceris, concedere 'moris: Et poscendi invicem eadem facilitas. ' Gaudent muneribus; fed nec data imputant, ' nec acceptis obligantur.' " No people are more " addicted to focial entertainments, or more libe-" ral in the exercise of hospitality. To refuse any "human creature admittance under their roof, is " accounted flagitious. Every one according to " his ability feafts his guest: when his provisions " are exhaufted, he who was late the hoft, is now " the guide and companion to another hospitable " board. They enter the next house uninvited, " and are received with equal cordiality. No difference

"ference is made, with respect to the rights of hospitality, between a stranger and an acquaint"ance. On the departure of the guest, it is cus"tomary to present him with whatever he may ask for; and with the same freedom a boon is desired in return. They are pleased with presentence in the same freedom a boon is desired in return. They are pleased with presentence in the same freedom. In the same freedom in the same freedom. They are pleased with presentence is made, with respect to the rights of the same freedom.

The American tribes, who refemble fo completely the ancient Germans, are thus characterised by Lastrau: 'Ils ont le coeur haut et sier, 'un courage a l'epreuve, un valeur intrepide, ' un constance dans les tourmens qui est heroique, une égalité que le contre-temps et les mauvais ' fuccés n'alterent point : Entre eux ils ont un · espece de civilité à leur mode, dont ils gardent toutes les bienseances, un respect pour leur anciens, une deference pour leur égaux qui a · quelque chose de surprenant, et qu' on a peine ' a concilier avec cette independance, et cette liberté dont ils paroissent extremement jaloux: Ils ' font peu caressans, et font peu de demonstra-'tions; mais non obstant cela, ils sont bons, affables, et exercent envers les etrangers et les mal-· heureux une charitable hospitalité, qui a de quoi confondere toutes les nations de l'Eurove. "They have a proud and haughty disposition, an " undaunted courage, an intrepid valour, a he-" roic constancy in torments, an equanimity which " adverfity and bad fuccefs cannot alter. They " practife among themselves a species of polite-

" ness after their own mode, and are extremely " attentive to propriety of behaviour. They dif-" cover a respect for their old men, and a defer-" ence towards their equals who furpass them in " any thing, which can fcarcely be reconciled " with that independence and liberty of which " they feem extremely jealous: They carefs little, " and make few demonstrations; but notwith-" flanding that, they are good, affable, and flow " a charitable disposition towards the unfortunate, " and hospitality to strangers that should put Eu-" ropean nations to the blush." Moeurs des Sauvages Ameriquains, vol. 1. p. 106. See also Charlevoix Journ. Hift. lettre 21. Such, with a few exceptions, it is to be thought, is the character of all nations in an early age of fociety.

[6] Tacit. de Mor. Germ. c. 15. Struvius, Corp. Hist. Ger. prolegóm. Cluver. Germ. Antiq. lib. 1.

[7] 'Cibi fimplices, agrestia poma, recens se'ra, aut lac concretum. Sine apparatu, sine
'blandimentis, expellunt famem. Adversus si'tim non eadem temperantia. Si indusferis ebrie'tati, suggerendo quantum concupiscunt, haud
'minus facile vitiis, quam armis vincentur.'
"Their tood is simple; wild fruits, fresh venison,
"or coagulated milk. They satisfy hunger with"out regard to the elegancies and delicacies of
"the table. In quenching their thirst they are
"not equally temperate. If their propensity to
"drunkenness be gratified by supplying them as
"plentifully as they chuse, they may be subdued

" by their vices as easily as by arms." Tacit. de Mor. Germ. c. 23.

[8] 'Crebrae ut inter vinolentos' rixae, raro 'conviciis, faepius caede et vulneribus, transieguntur. Sed et de reconciliandis invicem ini-' micis, et jungendis affinitatibus, et adsciscendis ' principibus, de pace denique ac bello, plerum-' que in conviviis consultant : Tanquam nullo ma-' gis tempore aut ad fimplices cogitationes pateat 'animus, aut ad magnas incalescat. Gens non 'aftuta nec callida aperit adhuc fecreta pectoris 'licentia loci. Ergo detecta et nuda omnium ' mens postera die retractatur: Et salva utriusque ' temporis ratio est. Deliberant dum fingere nes-'ciunt; constituunt dum errare non possunt.' "The frequent quarrels that arise amongst them " when intoxicated, terminate not fo often in a-" busive language, as in blood and flaughter. In " their feafts, they generally deliberate on the re-" concilement of enemies, on family alliances, on "the appointment of chiefs, and finally on peace " and war; conceiving that at no time the foul is " more opened to fincerity, or warmed to hero-" ifm. These people, naturally void of artifice " or difguife, disclose the most fecret emotions of "their hearts in the freedom of festivity. The " minds of all being thus displayed without re-" ferve, the fubjects of their deliberation are a-" gain canvaffed the next day; and each time " has its advantages. They confult when unable " to diffemble; they determine when not liable " to mistake. Tacit, de Mor. Germ, c. 22.

The deliberating on business, and the holding of councils of state during entertainments, was the practice of the Celtic and Gothic nations. And, it is remarkable, that the word mallum or mallus, which, during the middle ages, denoted the national assembly, as well as the county-court, is a derivative of mael, which signifies convivium.

From this union of festivity and business, there refulted evils which gave occasion to regulations which cannot be read without wonder. It was a law of the Longobards, 'Ut nullus ebrius fuam ' causam in mallum possit conquirere, nec testimo-' nium dicere; nec comes placitum habeat nisi ' jejunus.' " No drunk man shall be at liber-"ty to plead his own cause or to give evidence " in a court of justice; nor shall the magistrate " pass sentence unless he is fasting." LL. Longobard. lib. 2. tit. 52. l. xi. We read in Gapit Kar. et Lud. 'Rectum et honestum videtur ut judices ' jejuni causas audiant et discernant.' "It seems " fair and honest that judges should be fasting when "they hear and decide causes." Lib. 1. l. 62. ap. Lindenbrog. And the following law was made in a fynod held at Winchester ann. 1308. 'Item, ' quia in personis ebriis legitimus dici non debet ' consensus, inhibemus, ne in tabernis per quae-' cunque verba, aut nisi jejuna saliva, vir aut ' mulier de contrahendo matrimonio fibi invicem 'fidem dare praesumant.' "Because persons " when drunk, are incapable of giving a legal con-" fent, we forbid, least a man and woman attempt " to pledge themselves in a contract of matrimony, " when T ii

"when in a tavern by any form of words unless " with a fasting spittle." Wilkins, Concil. tom. 2. p. 205.

This rudeness, of which we see the source in Tacitus, feems to have continued very long in England. 'Non exolevit hactenus mos antiquis,' fays Sir Henry Spelman, ' nam in mallis feu placi-' tis, quae assissae jam vocantur, vicecomites pro-'vinciarum bis quotannis magnam exhauriunt ' vim pecuniae, in judicibus nobilibusque patriae 'convivandis.' "The ancient custom has not yet " ceased in the courts which are called affizes for " the sheriffs of the county to expend a large sum " of money twice a year in feafting the judges and " gentry of the country. Gloff. p. 385. In Scotland, in the memory of persons yet alive, the lawyers and retainers of the courts of justice did business constantly and openly in the tavern. It is likewise observable, that some particulars which regard the institution of the jury, are to be explained and illustrated from these facts, and this way of thinking. Historical Dissertation concerning the Antiquity of the English Constit. part 4. sect. 2.

[9] 'Nullas Germanorum populis urbes habitari, ' fatis notum est, ne pati quidem inter se junctas

' fedes. Colunt discreti ac diversi, ut fons, ut campus, ut nemus placuit. . . . Nec enim

' cum ubertate et amplitudine soli labore contendunt, ut pomaria conserant, et prata separent,

et hortos rigent. Sola terrae seges imperatur.

' Unde annum quoque ipsum non in totidem dige-

'runt species: Hiems, et ver et aestas, intellec-

'tum ac vocabula habent: Autumni perinde ' nomen

' nomen ac bona ignorantur.' "It is well known "that none of the German nations inhabit ci-" ties; or even admit of configuous fettlements. "They dwell, fcattered and feparate, as each is "determined to a particular fpot by a fpring, a " field, or a grove. . . . They do not attempt to " vie with the fertility and extent of their country " by their own industry in planting orchards, en-" clofing meadows, and watering gardens. Corn " is the only product required from the earth; "hence their year is not divided into fo many " feafons as ours; for while they know and dif-"tinguish by name winter, spring, and summer, "they are unacquainted equally with the appella-" tion and the bounty of autumn. Tacit. de Mor. Germ. c. 16. 26.

[10] 'Ceterum nec cohibere parietibus deos, ' neque in ullam humani oris speciem assimilare, ' ex magnitudine caelestium arbitrantur. Lucos ' ac nemora confecrant, deorumque nominibus ap-' pellant secretum illud, quod fola reverentia vi-' dent. Aufpicia sortesque ut qui maxime obser-" They conceive it unworthy the " grandeur of celestial beings to confine their de-" ities within walls, or to reprefent them under a " human form: woods and groves are their temples; " and they affix names of divinity to that fecret " power, which they behold with the eye of adora-" tion alone. No people are more addicted to the " methods of divining by omens and lots." Tacit. de Mor. Germ. c. 9. Struvius. Corp. Hist. Germ. prolegom.

[11] Tacit. de Mor. Germ. c. 12. Cluver, Germ. Antiq. lib. 1.

[12] 'Duces exemplo potius quam imperio, fi ' prompti, fi conspicui, fi ante aciem agant, admi-' ratione praefunt.' "Their generals commandless " through the force of authority, than of example. " If they are daring, adventurous, and confpicuous " in action, they obtain obedience from the ad-" miration they inspire." Tacit. de Mor. Germ. c. 7. [13] ' Nigra fcuta, tincta corpora, atras ad ' proelia noctes legunt. . . . Cedere loco, dum-' modo rursus instes, consilii quam formidinis ar-' bitrantur.' "Their shields are black, their bo-"dies painted; for battle they chuse the dark-" est nights. . . . To quit their ground and " inftantly advance again they confider as a mark,

" not of fear, but of wisdom." Tacit. de Mor.

" Germ. c. 6. 43.

A writer of reputation has, of late, advanced an opinion, that our European ancestors were averse from deceit and stratagem. Yet a propenfity to these is perhaps a characteristic of all barbarous nations; and, that it applied to our forefathers, the testimony before us is a sufficient proof. In opposition to the barbarians of Europe, he holds out the American Indians, and contends that they are defective in active courage. Open violence he accounts as descriptive of the former; a reliance on ftratagem and furprife, he remarks as peculiar to the latter. And, as the cause of this diversity, he affigns different original dispositions. Sketches of the History of Man, vol. 1. p. 23. 24.

The truth is, that a proneness to open violence, is to be applied to the American as well as to the European savage; and that the love of stratagem and surprise was not less peculiar to the European than to the American. Stratagem and surprise, in America and in Germany, and indeed in all tribes and nations whatever, are parts of the art of war, or of military prudence, and refer not to courage. When the military art is nearest to perfection, and when cultivation is highest, there will be less of stratagem in war; for cunning, if I may be allowed the expression, is the wisdom of weakness. The ingenious author hazards a conjecture for a discovery, and mistakes for philosophy a fally of vivacity.

'extra fines cujusque civitatis fiunt; atque ea ju'ventutis exercendae ac desidiae minuendae causa
'fieri praedicant.' "Robberies committed with"out the territories of their respective states are
"not considered as infamous, and they acknow"ledge that they are permitted for the sake of
"training their youth, and extirpating laziness."

Cæsar de Bell. Gall. lib. 6. c. 22. 'Materia munificentiae per bella, et raptus.' "The fund of
"their generosity is derived from war and rapine."

Tacit. de Mor. Germ. c. 14.

Among the Greeks the fame manners were known. It was common among them, in early times, for the more eminent and powerful to exercise, with reputation and honour, the crimes of robbery

robbery and piracy. Thucydides, lib. 1. Homer, Odyff. 3. Such is the case in all rude communities. In the wilds of America this way of thinking is prevalent at this hour. Warriors, restless and impatient, associate together, and seek for renown and plunder beyond the boundaries of their tribe. It is of bodies of this kind that Lasitau speaks in the following passage; which is not to be read, without recalling to one's mind what Cæsar and Tacitus have said of the Gauls and Germans.

'Le partis detachés, qui se forment en pleine ' paix, pour ne pas intereffer la nation par des hof-' tilités, lesqu'elles pourroient avoir des suites facheuses, vont porter la guerre chez les peuples 'les plus reculés. . . . Cette petite guer-' re est un veritable affassinat, et un brigandage. ' qui n'a nulle apparence de justice, ni dans le motif qui l'a fait entreprendre, ni par rapport aux ' peuples, à qui elle est faite; ils ne sont seulement ' pas conus de ces nations eloigneés, ou ne le font que par les dommages qu'ils leur caufent, lor-' fqu'ils vont les affommer ou de faire esclaves ' presque jusques aux portes de leur palisades. 'Les fauvages regardent cela neanmoins comme 'un belle action.' "The detached parties which " form themselves in profound peace, not to in-" terest the nation by hostilities, which might be " followed by troublesome consequences, go to " carry on war with the most distant nations. That little war is a true affaffination " and a robbery, which has no appearance of juf-46 tice

"tice either in the motive which made them undertake it, nor with regard to the people upon whom it is made. They are not even known to these distant nations, or only by the damage that they occasion to them, whilst they go to subdue them, or make slaves of them, even to the gates of their pallisadoes. The savages neverertheless look upon that as an heroic action."

Tom. 2. p. 169.

It was under the influence of fuch manners that the northern nations carried on those piratical incursions, which, from the time of Charlemaigne, filled Europe with terror. They were planned and conducted by men of rank, and conferred honour on them, and on the inferior adventurers. Yet modern historians, who are perpetually applying modern notions to ancient times, attend not to this circumstance, and treat these maritime expeditions with a severity that may be moral enough, but which is historically injudicious and absurd.

In the age of Tacitus, the only German community who appear to have conceived the blame of this conduct, were the Chauci. For the great fuperiority and refinement of this people, I pretend not to account. But though, in general, it confifted with honour and merit, among the German states, to commit spoil and plunder among neighbouring nations; yet, it is not to be forgot, that the thest or violence of an individual within the territorities of his own tribe, was atrocious, and a subject of punishment. This circumstance, which is curious in the history of morality, is to be explained

plained from the condition of an infant fociety. Their riches, confifting chiefly of herds and flocks, which wandering over vast tracts of country, are only to be protected by the terrors of justice. Hence the laws of the barbarians affixed death to the crime of stealing a horse, while the affassination, or the murder of a man, was expiated by a piece of money or a fine. 'Qui caballum furaverit, 'capite puniatur.' "He who steals a war horse " is to be punished with death." LL. Saxon tit. 4. 1. 1. The extent of their forests, while it contributed to render more easy the abstraction of cattle, made it the more necessary to punish the offence. It also was a refult of their unappropriated folitudes, that the proprietors of cattle found a difficulty in tracing them. Hence the cuftom of fixing bells to them. 'Mos quippe antiquus in-' oleverat Francis, et maxime Austrasiis, ut pascen-'tibus equis tintinnabula imponerent, quo si forte 'longius in pascendo aberrassent, eorum sonitu ' dignosci possent.' "There is an ancient custom. " among the Francs, and in particular the inha-" bitants of Lorraine, that while their horses are " feeding, they fasten little bells to them, that if, "while grazing, they should chance to wander. "they may be discovered by the found." Lindenbrog. Gloff. voc. Tintinnabulum. And what is worthy of notice, the taking away of these bells was a heinous delinquence, and punished severely. 'Si quis tintannabulum involaverit de jumento 'vel bove, folidum reddat. De vacca tremisses 'duos; De berbicibus vel quibuscunge pecoribus tremiffes I

* tremisses singulos cogatur exfolvere.' "If any " person shall seize upon these bells from an ox, " or other labouring beaft, he shall pay a shilling; " for a cow, two third parts of a penny; for weathers " or others of the flock, he shall be oblidge to pay for " each, one third part of a penny." LL. Wifigoth. lib. 7. tit. 2. l. 11. See also LL. Salic. tit. 29. et. LL. Burgund. tit. 4. §. 5. In general, the atrocity of theft among the Gothic nations, may be gathered from the following Swedish law, which is of high antiquity. 'In furti reum fecuri, furca, ' defossione, vivicomburio animadverti posse, nec ' eo nomine vel haeredibus, vel ecclesiae, vel regi, ' ullam satisfactionem deberi.' " Those accused of "theft may be punished by the ax, the gallows, " by being buried, or burnt alive." Stiernbook de jur. Sueon. et Goth. vet. p. 366.

These important circumstances in the history of manners, the legality of a diftant robbery, and the criminality of a domestic one, which are so pointedly illustrated by the early state of the . Greeks, by that of the German and Celtic barbarians, and by the condition of the American tribes at this hour, receive a confirmation, of the greatest weight, from the consideration of the Gentoo jurisprudence. In the code of Gentoo laws, there is this remarkable ordinance.

'The mode of shares among robbers is this: If any thieves, by the command of the magistrate, and with his affiftance, have committed depreda-' tions upon, and brought any booty from another * province, the magistrate shall receive a share of Uii one

one fixth of the whole; if they receive no command or affiftance from the magistrate, they
finall give the magistrate in that case, one tenth
for his share; and of the remainder, their chief
fhall receive four shares; and whosoever among
them is perfect master of his occupation, shall
receive three shares; also, whichever of them is
remarkably strong and stout, shall receive two
shares, and the rest shall receive one share; if any
one of the community of the thieves happens to
be taken, and should be released from the
cutcherry*, upon payment of a sum of money,
all the thieves shall make good that sum by e-

'qual shares.' Code of Gentoo laws, p. 146.

A person who has not considered savage and barbarous manners, will think, with the utmost surprise, that a magistrate should not only command a robbery, and give his countenance and protection to thieves, but even participate in their plunder. Such, notwithstanding, is the system of equity among all rude nations. While distant expeditions, however, and robberies, were thus considered as legal and honourable, the disturbers of domestic quiet and happiness were punished among the Hindoos with the greatest rigour.

'If a man,' fay their laws, 'fteals an elephant, 'or a horse, excellent in all respects, the magif- 'trate shall cut off his hand, and soot, and but- 'tock, and deprive him of life.

'If a man steals an elephant, or a horse, of small account, the magistrate shall cut off from him one hand and one foot.

· If

" the

'If a man steals a camel or a cow, the magiftrate shall cut off from him one hand and one foot.' Gentoo laws, p. 249.

There are, in this code, a great variety of laws against domestic thests and robberies. The state of society of the Hindoos, to which it has a reference, resembles very much that of the German barbarians, when they had overturned the empire of the Romans; and a comparison of it with the laws of the Ripuarians, Burgundians, Longobards, and Franks, would lead to many curious discoveries in the progress of legislation and government.

[15] 'Nec regibus infinita aut libera potestas. . . . De minoribus rebus principes conful-' tant, de majoribus omnes. Ita tamen, ut ea quo-' que, quorum penes plebem arbitrium est, apud ' principes pertractentur. Coeunt, nifi quid for-' tuitum et subitum inciderit, certis deibus, cum ' aut inchoatur Luna aut impletur; nam agendis rebus hoc auspicatissimum initium credunt.... ' Rex vel princeps, prout aetas cuique, prout no-' bilitas, prout decus bellorum, prout facundia est, ' audiuntur, auctoritate fuadendi, magis quam ju-' bendi potestate. Si displicuit sententia, fremitu 'aspernantur: Sin placuit, frameas concutiunt.' "Their kings possess not unlimited or independ-" ent authority. . . . On affairs of fmaller " moment, the chiefs confult; on those of great-" er importance, the whole community; yet with "this circumstance, that what is referred to the " decision of the people, is maturely discussed by

"the chiefs. They affemble, unless upon some fudden emergency, upon stated days, either at the full or change of the moon, which they account the most auspicious season for beginning any enterprise. The king, or chief, with such as are conspicuous for age, birth, military remown, or eloquence, are heard; and gain attention rather from their ability to persuade, than their authority to command. If a proposal displease, the assembly reject it by an inarticulate murmur; if it prove agreeable, they clash their javelins: for the most honourable expression of assembly region of assembly region.

This limitation of government is a consequence of manners in early times; and, notwithstanding what is observed by many writers of antiquity, it seems very clear, that the popular or republican mode of administration is prior to monarchy.

In every rude community we know, the government has a furprifing affinity to that of the Germans, as described by Tacitus. And this is peculiarly observable of the American nations. Tout,' says Charlevoix of the Americans, 'doit 'être examiné et arreté dans les conseils des anciens, qui juge en derniere instance.' "Every "thing ought to be examined and decreed in the "councils of the elders who judge in the last re-"fort." Journ. Historiq. lettre 18. 'The highest title among the Americans,' says Mr. Adair, 'ei-ther in military or civil life, signifies only a chieftain: They have no words to express despotic 'power

power or arbitrary kings. . . . The power of their chiefs is an empty found. They can only perfuade or diffuade the people, either by the force of good nature and clear reasoning, or ' colouring things fo as to fuit their prevailing ' passions. It is reputed merit alone that gives ' them any titles of distinction among the meanest of the people. . . . When any national af-' fair is in debate, you may hear every father of 'a family speaking in his house, on the subject, ' with rapid and bold language, and the utmost ' freedom that a people can use. Their voices, ' to a man, have due weight in every public af-' fair, as it concerns their welfare alike.' Hift. of the American Indians, p. 428. See also Lasitau, tom. 2. p. 475.

[16] 'Ac primo flatim Chaucorum gens, quam-' quam incipiat a Frisiis, ac partem litoris occu-' pet, omnium quas exposui gentium lateribus ob-' tenditur, donec in Cattos usque finetur. Tam immensum terrarum spatium non tenent tantum ' Chauci, fed et implent : Populus inter Germa-' nos nobilissimus, quique magnitudinem suam ma-'lit justicia tueri. Sine cupiditate, fine impoten-' tia, quieti secretique, nulla provocant bella, nul-' lis raptibus aut latrociniis postulabantur. Idque ' praecipuum virtutis ac virium argumentum est, ' quod, ut superiores agant, non per injurias affe-' quuntur. Prompta tamen omnibus arma, ac fi 'res poscat exercitus: Plurimum virorum equo-' rumque: Et quiescentibus eadem fama." " First " occurs the country of the Chauci, which, though

" it begins immediately from Frifia, and occupies " part of the shore, yet stretches so far as to bor-" der on all the nations before mentioned, till it " winds round fo as to meet the territories of the "Catti. This immense tract is not only posses-" fed, but filled, by the Chauci; a people, the " nobleft of the Germans, who chuse to maintain " their greatness by justice rather than violence. "Without ambition, without ungoverned defires, " quiet and retired, they excite no wars; they " are guilty of no rapine or plunder; and it is a " principal argument of their power and bravery, "that the fuperiority they possess has not been " acquired by injuries. Yet all have arms in rea-"diness; and, if necessary, an army is foon raif-" ed: for they abound in men and horses; and " maintain their military reputation even in inac-" tion." Tacit. de Mor. Germ. c. 35.

'Fennis mira feritas, foeda paupertas, non ar'ma, non equi, non penates: Victui herba, vef'titui pelles, cubile humus. Sola in fagittis fpes,
'quas inopia ferri offibus afperant. Idemque ve'natus viros pariter ac feminas alit. Passin enim
'comitantur, partemque praedae petunt. Nec
'aliud infantibus ferarum imbriumque suffugium,
'quam ut in aliquo ramorum nexu contegantur.
'Hunc redeunt juvenes, hoc senum receptaculum.
'Id beatius arbitrantur, quam in gemere agris, il'laborare domibus suas alienasque fortunas spe
'metuque versare. Securi adversus homines, se'curi adversus deos, rem difficillimum assecuti
'funt, ut illis ne voto quidem opus sit.' "The
"Fenni

" Fenni live in a ftate of furprifing favageness and " fqualid poverty. They are deflitute of arms, " horses, and settled abodes; their food is herbs; "their clothing, skins; their bed, the ground. "Their only dependance is on their arrows, which, " for want of iron, are headed with bone; and " the chase is the support of the women as well " as the men, who wander with them in the pur-" fuit, and demand a share of the prey. Nor do " they provide any other shelter for their infants " from wild beafts and ftorms, than a covering of " branches twifted together. This is the refort of " youth; this is the receptacle of old age. Yet " even this way of life is in their estimation hap-" pier than groaning over cultivated lands; toil-" ing in the erection of houses; subjecting their " own fortunes and those of others to the agita-" tions of alternate hope and fear. Secure against " men, secure against the gods, they have attain-" ed that most difficult point, not to need even a " wish." Tacit. de Mor. Germ. c. 46.

SECT. II.

[1] MR. MILLAR on the Distinction of Ranks, ch. 1. Sketches of the History of Man, vol. 1. Dr. Robertson, History of America, vol. p. 318.

[2] 'Verberare fervum, ac vinculis et opere 'coercere, rarum.' "It is unusual to scourge a "flave, or punish him with chains or hard la-"bour." Tacit. de Mor. Germ. c. 25.

[3] ' Domus officia uxor et liberi exequuntur.'

"The domestic offices are performed by his "wife and children. Tacit. de Mor. Germ. c. 25. Liberos suos,' says Caesar of the Gauls, 'nisi quum adoleverint, ut munus militae sustinere possint, palam ad se adire non patiuntur; filiumque in puerili aetate in publico in conspectu patris affistere turpe ducunt.' They do not suffer their children to come before them publicly till once they have grown up; and they think it unbecoming for a son in his boyish years to stand up in public in the presence of his father." De Bell. Gall. lib. 6. c. 18.

[4] ' Quum ex captivis quaereret Caefar, quam-' obrem Ariovistus proelio non decertaret? hanc · reperiebat causam, quod apud Germanos ea con-' fuetudo esset, ut matres familias earum fortibus 'et vaticinationbus declararent, utrum proelium " committi ex usu esset necne, eas ita dicere, non 'esse fas Germanos superare, si ante novam Innam · proelio contendissent.' " When Caesar inquired " of the captives the reason why Ariovistus " did not engage, he learned, that it was because "the matrons, who among the Germans are ac-" customed to pronounce, from their divinations, " whether or not a battle will be favourable, had " declared that they would not prove victorious, "if they should fight before the new moon." Caesar de Bell. Gall. lib. 1. c. 50.

[5]. Strabo, lib. 7. Struviuus, Corpus Histor. German. prolegom. Cluver. German. Antiq. lib. 1.

[6] 'Inesse quinetiam sanctum aliquid, et pro-'vidum putant. . . Vidimus sub Divo Vespasiano pafiano Velledam diu apud plerosque numinis loco habitam. Sed et olim Auriniam, et complures alias venerati sunt, non adulatione, nec tamquam facerent deas.' "They even supe pose somewhat of sanctity and prescience to be inherent in the semale sex. . . . We have beheld, in the reign of Vespasian, Veleda long reverenced by many as a Deity. They formerly also venerated Aurinia, and several others; but without adulation, or as if they intended to make them goddesses. Tacit. de Mor. Germ. c. 8.

The honours of divinity came to be profituted to these women with a wonderful profusion. Among the monuments of antiquity in Germany, many altars, with inscriptions to them, have been discovered; and, both in England and Scotland, there are remains of the same kind. Keyser, Antiq. Select. Sepentr. et Celt. p. 379—448. Camden, Britannia, passim. The appelation given them, in Caesar, is matres familias; and these inscriptions bear matribus or matronis Suevis, Treveris, Ausanis, &c.

Under Paganism and Christianity, the fatidical arts they practised drew upon them a very different fate. The credulity of the Pagan advanced them into goddesses. The more criminal ignorance of the Christian considered them as witches, and consigned them to the fire. Their mutterings were conceived to be magical. It was thought they could fascinate children with a look, were in covenant with demons, to whose embraces they

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fubmitted.

fubmitted, could blaft the fruits of autumn, raife commotions in the air, and interprete dreams. What is remarkable, the laws against such women, and against witchcraft, were not abrogated in England till the year 1736: And, in other countries of Europe, there are still regulations in force against these miserable objects, and this imaginary crime.

[7] 'Ad matres ad conjuges vulnera ferunt: 'Nec illae numerare, aut exfugere plagas pavent.'
"To their mothers and wives they bring their "wounds and these are not shocked at count"ing, and even sucking them. Tacit. de Mor.

Germ. c. 7. Cluver. Germ. Antiq. lib. 1.

[8] ' Feminae lineis amictibus velantur, eofque "Their women are dref-'purpura variant. " fed in linen which they stain with purple." Tacit. de Mor. Germ. c. 17. 'Cadurci, Caleti, 'Ruteni, Bituriges, ultimique hominum existimati ' Morini, imo vero Galliae universi vela texunt. ' Jam quidem et Transrhenani hostes: Nec pul-' chriorem aliam vestem eorum feminaen overunt.' " The Cadurci, Caleti, Ruteni, Bituriges, the " Morini who are reckoned the farthest off of these " people; and in fhort the whole Gallic nation " wear veils, as do likewise their enemies on the " opposite fide of the Rhine; nor are their wo-"men accquainted with a more elegant part of "dress." Plin. Aist. Nat. lib. 19. c. 1. Concerning the Longobards, there is the following passage in Paulas Diaconus: 'Vestimenta eis erant laxa. ' et maxime linea, qualia Anglo-Saxones habere folent

' folent, ornata institis latioribus, vario colore con-' textis.' "Their garments are loofe, and chiefly " of linen, fuch as the Anglo-Saxons commonly " wear with a broad lace or border woven of va-" rious colours. Hift. Longobard. lib. 4.c. 7. And of the daughters of Charlemaigne, there is this notice in Eginbard. 'Filias lanificio affuescere, coloque 'ac fuso, ne per otium torperent, operam impen-' dere, atque ad omnem honestatem erudiri justit.' " He ordered his daughters to be accustomed to " dreffing of wool, to the spindle and the distaff; " to attend their work, and to be taught every " ufeful art that they might not flumber in idle-" nefs." Vit. Car. Mag. In America, according to Mr. Adair, the women are the chief, if not the only manufacturers. The men judge, that if they should perform offices of this kind, it would exceedingly difgrace them. Hift. of the Amer. Indians, p. 423. These offices, however, being characterestic of the women, are honourable in them. In Rome, during the virtuous times of the republic, the employments of the women were the diftaff and the spindle; and Plutarch has said, in reproach of Fulvia the widow of Clodius, that she could neither spin nor stay at home. Vit. Anton.

[9] 'Statim e somno, quem plerumque in diem 'extrahunt, lavantur, saepius calida, ut apud quos 'plurimum hiems occupat.' "As soon as they "arise from sleep, which they generally protract "till late in the day, they bathe, usually in warm "water, as cold weather chiefly prevails there."

Tacit. de Mor. Germ. c. 22.

^{--- &#}x27;Mollefque

Mollesque flaggellant

'Colla comae.'

" Their smooth hair falls on their shoulders."

MART. Epig. lib. 1.

'Partemque vestitus superioris in manicas non extendunt, nuda brachia ac lacertos: Sed et proxima pars pectoris patet.' "They do not lengthen their upper garment into sleeves, but leave exposed the whole arm and breast." Tacit. de Mor. Germ. c. 17. 'Cet usage,' says Pelloutier, s'est conservé en Saxe, en Prusse, et en Livonie. Les semmes y portent des chemises fans manche, et laissent leur gorge à decouvert.' "This custom is preserved in Saxony, Prussia, and Livonia. The women there wear shirts without seleves, and leave their necks bare." Hist. des Celtes, lib. 4. cb. 4.

Diodorus Siculus, lib. 5. records the comeliness both of the Gaulic and German women; and Biffula, a German beauty, is celebrated by Ausonius.

[10.] 'Matrem suam,' says Tacitus of Civilis, 'sororesque, simul omnium conjuges, parvosque 'liberos, consistere a tergo jubet, hortamenta victoriae.' "He ordered his own mother, his sisters, "and the wives and little children of the rest to remain in the rear as an incitement to victory. Hist. lib. 4. 'In proximo pignora; unde feminarum ul-'lulatus audiri, unde vagitus infantium. . . . 'Memoriae proditur quasdam acies, inclinatas

'Memoriae proditur qualdam acies, inclinatas
'jam et labantes, a feminis restitutas, constantia

' precum, et objectu pectorum, et monstrata co-

'minus captivitate, quam longe impatientius fe-

minarum fuarum nomine timent.' " Near them " are ranged their domestic pledges, fo that they " have within hearing the yells of their women, " and the cries of their children. . . . Tra-" dition relates, that armies beginning to give way " have been brought again to the charge by the " women, through the earnestness of their entrea-" ties, the opposition of their bodies, and the pic-" tures they have drawn of imminent flavery; a " calamity which these people bear with more im-" patience on their women's account than their "own." Tacit. de Mor. Germ. c. 7. 8. 'Ut vi-' rorum cantu, feminarum ululatu, fonuit acies.' "The line of battle refounded with the fongs of " the men, and the howling of the women." Tacit. Hist. lib. 4. See also Cafar de Bell. lib. Gall. I. c. 51.

'Adeo ut efficacius obligentur animi civitatum, 'quibus inter obfides, puellae quoque nobiles impe'rantur.' "Those states who have been obliged
"to give among their hostages the daughters of
"noble families are the most effectually engaged
', to fidelity." De Mor. Germ. c. 8. Suetonius,
speaking of the transactions of Augustus against
the barbarians, has these words: 'A quibusdam
'novum genus obsidum feminas exigere tentave'rit; quod negligere marium pignora sentiebat.'
"From some nations he attempted to exact a new
"kind of hostages, women; because he observed
"that those of the male sex were disregarded."
Vit. Aug. c. 21.

[11] 'Sororum filiis idem apud avunculum qui

'apud patrem honor.' "There is the same dis-" tinction to their fons, with their uncle, as with " their father." Tacit. de Mor. Germ. c. 20. Hence it is, fays Montesquieu, that our earliest historians speak in such strong terms of the love of the kings of the Franks for the children of their fisters. L'espirit des Loix, lib. 18. ch. 22. John de Laet remarks of the Brasilians, that they call their uncles and aunts fathers and mothers; and the same custom prevails among the north American Indians. Adair bist. of the Amer. Indians p. 213. Among the Hurons, fays Charlevoix, with whom the dignity of the chief is hereditary, fuccession is continued through the women; so that, at the death of a prince, it is not his own, but his fifter's fon who fucceeds; and, in default of him, the nearest relation in the female line. It is added, 'Si toute un branche vient à s'eteindre, la ' plus noble matrone de la tribu, ou de la nation, chofit, le fujet, qui lui plait davantage, et le de-' clare chef.' " If a whole family becomes ex-" tinct, the most noble matron of the tribe or na-"tion, chuses the subject, who pleases her best " and declares him chief." Fourn. Hift. Lett. 18. ' Æthiopes,' fays Damascenus, sororibus potissimum ' honorem exhibent, et successionem tradunt re-' ges, non fuis, fed fororum filiis.' "The Ethio-" pians pay the utmost honour to fisters, and their "kings deliver their fuccession not to their own " fons, but to the fons of their fifters." De mor. Gent. These facts which coincide so curiously, express,

express, in a forcible manner, the early importance of the sex.

[12] ' Nec aut confilia earum afpernantur, aut ' responsa negligent.' " They neither despise " their councils nor difregard their responses." Tacit. de Mor. Germ. c. 8. To deliberate, in public. on national concerns, was a privilege common to the women in all the Gothic and Celtic tribes. Plutarch, de virtut. mulier. Polyaenus in Stratag. lib. 7. This advantage they enjoyed also in old times in Greece. Goguet, part. 2. book 1. ch. 4. And, at this hour, in America, they are called to the national meetings, to give their advice and counsel. Charlevoix, Journ. Hift. let. 13. 18. 'Les femmes,' fays Lafitau,' font toujours les ' premieres qui deliberent, ou qui doivent delibe-' rer, felon leur principes, sur les affaires particu-· lieres ou communes. Elles tiennent leur conseil ' à part, et en consequence de leur detrmination, 'elles donnent avis aux chefs des matieres qui ' font sur le tapis, afin qu'ls en deliberent à leur ' tour. Les chefs, fur ces avis, font affembler les 'anciens de leur tribu; et si la chose dont on doit ' traiter interesse le bien commun, tous se reunis-' fent dans le conseil generale de la nation.' " The " women are always the first who deliberate or " ought to deliberate according to their principles " on public or private affairs. They confult by "themselves, and in consequence of their deter-" mination, they give advice to the chiefs on the " bufiness in agitation. The chiefs upon that in-" formation assemble the old men of their tribe;

"and if the affairs on which they are consulted concern the public good, they all meet in the general council of the nation." Tome 1. p. 477.

The German women, after their nations had made conquests, still attended to affairs. As they debated, in the days of Tacitus, in the affemblies of their tribes, fo they appeared afterwards in the Gothic parliaments. Among the Franks, as well as the Anglo-Saxons, the Queens had an active fhare in the government; and, among the former there is the example of a Queen who received a national homage. Greg. of Tours, lib. 4. Werburgh, Queen to King Wightred, affifted at the wittenagemot, or national council, held at Berghamsted. Chron. Sax. p. 48. Malmsbury, lib. 2. mentions a parliament held by King Edgar, in which he was affifted by his mother Alfgina. And Canute is faid, in a national affembly, to have acted by the advice of Queen Emma, and the bishops and nobility of England. Mat. West. p. 423.

When the crown fell to a prince in his minority, the queen-mother had the guardianship. Thus Fredegund had the guardianship of her son Clotarius II. Brunehild of her grandsons Theodebert and Theodoric, and Balthildis of her son Clotarius III.

[13] The following particulars, as well as those already mentioned, favour the notion of the importance of women in early times. 'Apud Sautinias vel Samnites, de adolescentibus et virginia bus quotannis publicum habetur judicium. Quem 'igitur

· igitur eorum optimum esse sententia judicum pro-4 nunciarit, is fibi ex virginibus eligit uxorem quam vult, deinde fecundus ab eo alteram, et fic de ' caeteris deinceps.' " Among the Samnites, there " is a public examination held every year of the " young men and virgins. Among the youths, " he, who is pronounced best by the sentence of " the judges has his choice of a wife from among "the young women; then the fecond has his " choice in the same way, and so on the rest." Damasc de Mor. Gent. 'Sauromatae uxoribus in om-' nibus obtemperant, tanquam dominabus.' " Sau-" romate obey their wives as their fuperiors in e-" very thing." Ibid. 'Lycii vitam fustinuerunt ' ex latrociniis. Legibus autem non utuntur, fed consuetudinibus, dominanturque ipsis feminae in-' de usque ab initio.' " The Lycians support their " lives by robbery; they do not observe laws, but " cuftoms: and women have governed them from " the beginning." Heraclides de Politiis Graecorum. ' In ea regione quam Athamanes habitant, muli-' eres terram colunt, viri greges pascunt.' "In " that country which the Athomantes inhabit, the " women cultivate the foil, and the men take care " of their flocks." Ibid. Tacitus, discoursing of the ancient Britains, has these words. 'His at-' que talibus invicem instructi, Boudicea generis ' regii femina, duce (neque enim fexum in impe-' riis discernunt) sumpsere universi bellum.' "In-" fligated by fuch fuggestions, they unanimously " rose in arms, led by Boadicea, a woman of royal " descent, for they make no distinction between Yii " the

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" the fexes in fuccession to the throne." Vit. Agric. c. 16. In Homer, who paints rude manners, the women make a figure. In Virgil, who describes refined manners, they are infipid. Helen, Hecuba, Andromache, Penelope, Nauficaa, and Calypso, have marked and distinct characters. Lavinia feems to be without passions of any kind, and to have that nothingness of character which, in the ages of civility, is too frequently connected with the most enchanting forms. The women of Egypt were highly prized, and had a kind of authority over the men. The toilets of the goddesses in Homer, and the gay dresses of the Greek ladies, feem to mark the confideration of the fex. At Sparta, the women interfered in the affairs of state, and assumed a superiority over the men. ' Les femmes,' fays Charlevoix of the Americans, ont la principale autorité chez tous les peuples ' de la langue Huronne, si on en excepte le can-'ton Iroquois d'Onneyouth, ou elle est alterna-' tive entre les deux fexes.' "The women have "the principal authority in the nations which " fpeak the Huron language, except the Iroqui " canton of Onneyouth, where it is alternative " between the fexes." Journ. Hist. lett. 18.

The importance of women among the Hindoos, is illustrated in a striking manner by the following laws.

'If a person has called a modest woman unchaste, and the woman, or her husband, should
make complaint to a magistrate, whenever the
person accused appears before the magistrate, or
arbitrator,

' arbitrator, he shall, upon the spot, answer to the

complaint, and make no delay.

' If a woman, impelled by any calamity, should ' come to any person, and remain with him, if he

' commits fornication with that woman, the ma-

' giftrate shall fine him two hundred and fifty puns

of couries.

' If a man speaks reproachfully of his wife's fa-' ther or mother, the magistrate shall fine him fifty buns of cowries.

'If a man is prepared to cast upon a woman's body tears, or phlegm, or the paring of his nails,

or the gum of his eyes, or the wax of his ears,

or the refuse of victuals, or spittle, the magistrate

' shall fine him forty puns of cowries.

'If a man throws upon a woman, from the ' neck upwards, any fpue, or urine, or ordure, or ' femen, the magistrate shall fine him one hundred ' and fixty puns of cowries.

'So long as a woman remains unmarried, her father shall take care of her; and, so long as a

' wife remains young, her husband shall take care

' of her; and, in her old age, her fon shall take

' care of her; and if, before a woman's marriage.

' her father should die, the brother, or brother's

fon, or fuch other near relations of the father, ' shall take care of her; if, after marriage, her

' husband should die, and the wife has not brought

' forth a fon, the brothers, and brothers fons, and

fuch other near relations of her hufband shall

take care of her: If there are no brothers, bro-

thers fons, or fuch other near relations of her · husband,

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- ' husband, the brothers, or fons of the brothers of
- ' her father shall take care of her; and, in every
- ' ftage of life, if the perfons who have been allot-
- ' ted to take care of a woman, do not take care
- ' of her, each, in his respective stage accordingly,
- ' the magistrate shall fine them.' Code of Gentoo laws, p. 111. 163. 214. 220. 224. 282.

SECT. III.

- [1] 'Er Venus in Sylvis jungebat corpora, a-mantum;
- ' Conciliabat enim vel mutua quamque cupido,
- ' Vel violenta viri vis, atque impensa libido,
- ' Vel precium, glandes, atque arbuta, vel pira lecta.'
 - " Befides, Venus in the woods united the bodies
- " of lovers; for either mutual defire reconciled
- "them, or, the violent force and unbridled luft
- " of the male, or a bribe of acorns, or strawberries,
- " or choice pears." Lucret. lib. 5.
- [2] 'Interfunt parentes et propinqui ac munera
- ' probant: Munera non ad delicias muliebres quae-
- ' fita, nec quibus nova nupta comatur; fed boves
- ' et frenatum equum, et scutum cum framea gla-
- ' dioque. In haec munera uxor accipitur, atque
- ' invicem ipsa armorum aliquid viro offert. Hoc
- ' maximum vinculum, haec arcana facra, hos con-
- ' jugales deos arbitrantur.' " The parents and re-
- " lations interpose, and pass their approbation on
- " the prefents—prefents not adapted to please a
- " female tafte, or decorate the bride; but a yoke
- " of oxen, a caparifoned fleed, a shield, spear, and

" fword.

"fword. By virtue of these, the wise is espous"ed; who, on her part, also makes a present of
"armour to her husband. This they consider as
"the sirmest bond of union; these, the sacred
"mysteries, the conjugal deities." Tacit. de Mor.
Germ. c. 18.

Remains of these usages are to be found during every period of the middle ages. About the year 500, on the marriage of Alamaberga, the niece of Theodoric King of the Oftrogoths, that prince wrote a letter to her husband, Hermanfrid, King of the Thuringians; from which it appears, that dressed or accoutred horses were presented; and, in Loccenius, there are other examples to the same purpose. Antiq. Sucogoth. lib. 2. Among the Irish, a war horse and a spear were conjugal presents, till a late æra. 'Ejusmodi quidpiam,' says Sir Henry Spelman, in allusion to the passage quoted from Tacitus, ' apud Germanorum nepotes Hi-' bernicos ipfimet aliquando deprehendimus. E-' quum scilicet militarem cum framea inter jugalia ' munera folennius fuisse, sed a patre sponsae do-' natum. Addebant autem Hiberni cytharum, " ut blandioris fortunae folatium. " We ourselves " find fomething of this kind, fometimes among " the Irish the descendants of the Germans. " mong other nuptial prefents, a war horse and a " fpear were, usually, given by the father of the " bride. The Irish likewise added a harp, as the " amusement of a milder destiny." Gloss. p. 174.

In the American marriages, an interchange of presents was also an essential circumstance, and

gave them a fanction and validity. 'Le marriage ' n'est pas plutot resolu que le parentes de l'epoux envoyent un present dans le cabane de l'epouse. · Ce present consiste en des colliers de porcelaine, ' des pelleteries, quelques couvertures des four-' rure, et d'autres meubles d'usage, qui vont aux ' parens de la fille, à laquelle on ne demande point ' de dot; mais seulement qu'elle veuille accepter 'l'epoux qu'on lui offre. Ces fortes des presens ' ne se font pas seulement une fois, il s'en fait un ' espece d'alternative entre les deux cabanes des · futurs epoux, laquelle a fes loix prescrites par la ' coutume; mais, des que les presens sont accep-'tés, le marriage est censé, conclu, et le contrat ' passé.' " The marriage is no sooner resolved up-" on, than the parents of the bridegroom fend a " present to the cabbin of the bride. This present " usually confifts of necklaces of porcellaine, skins, " fome robes of fur, and other moveables in com-" mon use. The parents go to the parents of the " girl, from whom they do not ask any portion; but " only that she would accept as her spouse him " whom they offer to her. These forts of presents are " not made once only, they make a kind of con-" tinued intercourse between the two cabbins of "the future couple, which has its laws prescribed " by custom: but the presents once accepted, the " marriage is deemed concluded, and the contract " passed." Lasitau, tom. 1. p. 565.

From the words of Tacitus, it appears, that among the Germans the confent of the parents or relations was particularly necessary in the con-

tracting of marriages; and this is still more obvious from the laws of the barbarians, after they had made conquests. LL. Wifigoth, lib. 3. tit. 2. 4.8. LL. Saxon. tit. 6. LL. Frifionum, tit. 9. The reafon was, that the young men and the young women might not, through passion, marry into families hoffile to their own. In a flate of fociety which is confined, and where government is imperfect, divisions and animosities among chiefs are frequent, and carried to extremity. It is useful to remark, that the necessity of this consent, and the fimilar diforder of the feudal manners, afcertained the incident of marriage; in confequence of which, the wards of a fuperior could not marry without his approbation. This incident, which was to grow fo important, is to be traced back to the woods of Germany. Hift. Differt. concerning the Antiq. of the English Constitution, part 2.

[3] 'Nec se mulier extra virtutum cogitatio'nes, extraque bellorum casus putet, ipsis incipi'entis matrimonii auspiciis admonetur, venire se
'laborum periculorumque sociam, idem in pace
'idem in bello passuram ausuramque; hoc juncti
'boves, hoc paratus equus, hoc data arma
'denuntiant. Sic vivendum, sic pereundum.'
"That the woman may not think herself excused
"from exertions of fortitude, or exempt from the
"casualties of war, she is admonished by the very
"ceremonial of her marriage, that she comes to
"her husband as a partner in toils and dangers;
"an equal both to suffer and to dare, in peace
"and in war: this is indicated by the yoked oxen

"the harnessed steed, the offered arms. Thus she is to live; thus to die." Tacit. de Mor. Germ. c. 18.

The matrimonial gifts among the favages of America, expressed, in like manner, the labour to which the women were to fubmit, and were doubtless to be understood in the same light, as indications of equality, and expressions of respect. Yet Charlevoix affects to confider them rather as marks of flavery, than as testimonies of friendship. Journal Hist. let. 19. Of this author, it is to be wished, that he had given his facts without reafoning upon them; or, that he had endeavoured to be confiftent with himself; for, in other parts of his writings, we are led to conceive a high opinion of the state of the American women. Lord Kaims and Mr. Millar feem, in the prefent case, to have estimated too highly his opinion. And I am fenfible that Dr. Robertson has subscribed to their fentiments. They join, in considering the presents to the women as characteristic of the meanness of their condition, and of their being the flaves of the men. They connect flavery with labour and bufiness, without reflecting, that eafe and luxury cannot poffibly belong to women in barbarous times, and that, in all times, the men and women are to be judged of by different The warrior does not apply the fame rules to his fon and his daughter, and does not fancy that they are to shine alike in feats of arms. Valour he accounts the chief quality of the former: In the latter, he requires fomething more of gentlenefs

gentleness, and a skill in domestic affairs. Of this there is a very strong and apt illustration in Mr. Adair, with which I will conclude this note.

' The American Indians lay their male children on the skins of panthers, on account of the com-' municative principle, which they reckon all na-' ture is possessed of, in conveying qualities accord-'ing to the regimen followed; and, as the pan-' ther is endowed with many qualities beyond any of his fellow animals in the American woods, as ' fmelling, strength, cunning, and a prodigious ' fpring, they reckon fuch a bed is the first rudi-' ments of war. But, it is worthy of notice, that ' they change the regimen of nurturing their ' young females: These they lay on the skins of ' fawns, or buffalo-calves, because they are shy ' and timorous; and, if the mother be indisposed by fickness, her nearest female relation suckles ' the child, but only till she recovers.' Hist of the American Indians, p. 421.

I enter not into the dispute, whether there be panthers in America, or whether this name is only given to distinguish animals which resemble them. In either case, my argument is safe, and to the point.

[4] 'Pugnatum in obfidentis; et ereptus Se'gestes, magna cum propinquorum et clientum
'manu. Inerant feminae nobiles; inter quas ux'or Arminii eademque filia Segestis, mariti magis
'quam parentis animo, neque victa in lachrymas,
'neque voce supplex, compressi intra sinum ma'nibus, gravidum uterum intuens.

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· Arminium

Arminium fuper infitam violentiam rapta uxor fubjectus fervitio uxoris uterus, vecordem age-'bant; volitabatque per Cheruscos arma in Se-' gestem, arma in Caesarem poscens.' "There " was a battle with the befieged; and Segeftes, " with a large body of his followers and relations, " was taken prisoner. There were some noble " women, and among these, one, the wife of Ar-" minius and the daughter of Segestes. A wo-" man of the spirit, rather of her husband, than " of her father. Though captive, she neither " fhed a tear, nor offered a supplication: but " prefling her hands on her bosom, she fixed her " eyes on the ground.* . . . The feizure " of his wife, and her fubjection to foreign fervi-" tude, transported the frantic Arminius beyond " his usual rage. He flew through the Cherusci, " calling them to arms, for Segestes and for Cae-" far." Tacit. Annal. lib. 1. c. 57. 59.

[5] 'Severa illic matrimonia. . . . Paucissima in tam numerosa gente adulteria, quorum poena praesens et maritis permissa. Acciss
crinibus, nudatam coram propinquis expellit
domo maritus, ac per omnem vicum verbere
agit.' "Marriages are observed with severity
. . . Adultery is extremely rare among so
numerous a people. Its punishment is instant,
and at the pleasure of the husband. He cuts
off the hair of the offender, strips her, and in
presence of her relations expels her from his
house,

^{*} The original expression can hardly bear a translation.

" house, and pursues her with stripes through the "whole village." Tacit. de Mor. Germ. c. 18. 19.

The power of the husband to punish the adultery of the wife continued long during the middle ages. LL. Wisigoth, lib. 3. tit. 4. l. 3. 4. LL. Burgund. tit. 68. l. 1. It seems natural in a state of society, before the jurisdiction of the magistrate is fully acknowledged; and it is to be found accordingly among the Americans and other nations. Lasitau, tom. 1. p. 588. Europ. Settlem. vol. 1. p. 180.

It is likewife to be observed, that the fame mode of punishment prevailed long. 'Adulterii 'poena, fays Lindenbrogius, decalvari et fustari 'per vicos vicinantes.' "The punishment of a-" dultery is to have the hair cut off, and be beat-" en through the neighbouring villages." Gloff. p. 1349. See farther LL. Longobard, lib. 1. tit. 17. When the magistrate came to punish this 1. 5. delinquence, and, when the women, growing more detached from business, considered themfelves as objects of luxury and pleafure, the crime of adultery appeared less heinous and offensive; and a feparation or divorce, with the infamy of incontinence, became the punishment of an adulteress.

From the affembled relations of the culprit, of whom Tacitus speaks, it is to be imagined, that, in conjunction with the husband, they constituted a court, and fat upon her in judgment. Coram propinquis expellit domo maritus. Before the jurif-diction of the magistrate is fully understood and unfolded,

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unfolded, it appears, that a kind of domestic tribunal exercises authority, and forms a step in the progress of civil and criminal jurisdiction. This, in fact, we know to have been the case among the Romans. Dion. Halicarn. Antiq. Rom. lib. 2.

[6] 'Publicatae pudicitiae nulla venia: Non 'forma, non aetate, non opibus maritum invene'rit. Nemo enim illic vitia ridet: Nec corrum'pere et corrumpi feculum vocatur.' "Nor is any "indulgence shewn to a prostitute. Neither beau"ty, youth, nor riches, can obtain her a husband: "for none there looks on vice with a smile, nor "calls mutual seduction the way of the world."

Tacit. de Mor. Germ. c. 19.

Tacitus, in this passage, as well as in many other places of his sentimental and incomparable treatise, glances at the depraved manners of the Romans. The expression non opibus, of which I have made no use in the text, applies not to the German tribes who inhabited the inland country, but to those who bordered on the territories of the Romans.

The fame attentions to chaftity, so beautifully described by the Roman historian, prevailed among the Americans. 'Ils attribuent à la virgi'nité et a la chastité certaines qualités et vertus 'particulieres.' "They ascribe to virginity and "chastity certain qualities, and peculiar virtues." Lastau, tom. 1. p. 339. Thus it is in all rude nations; and, I believe, it will be found, on examination, that those circumstances of immodesty among them, which oppose this way of thinking, have

have their rife in the weaknesses of superstition, and in the abuses of the priesthood.

Nature adorns and protects the female fex with modesty. And, it is a most decisive proof of the respect paid to women, that, in almost all nations, the inftitution of marriage is connected with ufages, which are contrived to favour and encourage their referve and chaftity. It is the male always who folicits; and, in some states, a kind of violence was employed to support and succour the modesty of the bride. It feems to have been thus in early times among the Romans, and it was obvioufly fo among the Spartans. In the former case, the bride appears to have been carried forcibly from the lap of her mother; in the latter, the affair assumed the semblance of a rape. Festus, Catullus, Plutarch in Vit. Lyeurg. et Quaest. Rom. The virgin and her relations, no doubt, understood previously the transaction, and expected this violence. But it was a compliment to her thus to give an air of constraint to her consent, to relieve her embarraffment and diffress, her emotion of fear and hope, anxiety and tenderness.

It was with a fimilar view that the Romans conducted a bride to the house of her husband, with her head covered. And the Germanic nations paid also this mark of respect to the modesty of their women, after they had made conquests. Compare Apul. Metam. lib. 4. Tacit. Annal. lib. 15. c. 37. And the laws of the barbarians de conjuguli velatione.

These circumstances, and those which I former-

ly remarked, with others not less expressive of the early importance of women, that I am prefently to mention, seem to have escaped my Lord Kaims and Mr. Millar; and I beg it to be understood, that I oppose thus frequently their opinions from no captiousness of temper, but, because, if they are just, mine must be ill sounded and improper.

[7] 'Sera juvenum venus; eoque inexhausta ' pubertas; nec virgines festinantur; eadem ju-'venta, fimilis proceritas: Pares validique mifcentur; ac robora parentum liberi referunt. · . . . Quanto plus propinguorum, quo ' major adfinium numeras, tanto gratiofior senectus: Nec ulla orbitatis pretia. . . . Nu-' merum liberorum finire, aut quemquam ex ag-'natis, necare, flagitium habetur.' "The youths " partake late of venereal pleasures; and hence " pass the age of puberty unexhausted: Nor are " the virgins hurried forward; the same maturi-"ty, the fame full growth, is required: The " fexes unite equally matched, and robust; and " the children inherit the vigour of their parents. The more numerous are a man's re-" lations and kinfmen, the more comfortable is " his old age; nor is it any advantage to be " childless. . . . To limit the increase of " children, or to put to death any of the huf-" band's blood, is accounted infamous." Tacit, de Mor. Germ. c. 19. 20.

[8] 'Sua quemque mater uberibus alit, nec and cillis, ac nutricibus delegantur.' "Children are fuckled

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" fuckled by their own mothers nor are they in-" trusted to nurses or female servants." Tacit. de Mor. Germ. c. 20. This also is the practice in America and in all rude communities. 'Les fau-' vagesses n'ont garde de donner leur enfans à ' d'autres pour les nourrir. Elles croiroient se dé-' pouiller de l'affection de mere, et elles font dans ' une furprise extrême de voir qu'il y ait des na-' tions au monde, ou cette usage soit recû et eta-'bli.' " The female favages never give their " children to be nurfed by another. They would " think that they divested themselves of the af-" fection of a mother; and they are very much " furprifed to learn that there are nations in the " world where that practice has been received and " established." Lasitan, tom. 1. p. 593. The Roman virtue was at an end, fays the author of the dialogue concerning orators, when the women gave their children to be fuckled and educated by Greek nurses and flaves. Cap. 29. In France, till the age of Charles V. princesses, and ladies of high rank, continued to fuckle and educate their children. Mezeray in Bulteel's translation, p. 388.

[9] A very ingenious writer has observed, that, before marriage is known as a regular institution, the interest of the mother must be great; children being then, in a particular manner, under her jurisdiction, and having no connection, or a distant one, with the father. His observation is not to be controverted; and, accordingly, he mentions the circumstance, as an exception to his theory. Prof. Millar concern. the Distinc. of Ranks, ch. 1. § 2.

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It is obvious, that the respect which the children pay to the mother in this fituation, raifes the importance of the fex; and it is worthy of notice, that, after marriage is known as an inflitution, and the husband and wife live together in the same cabbin, the influence of the mother is by no means diminished. For, though the father then acquires authority, the more amiable and winning attentions of the mother preserve and continue her confideration; and the military purfuits of the former calling him abroad, and employing his thoughts, leave to her the talk of educating their offspring. Thus, among the Gauls and Germans, it was not till children attained a certain age, that they dared publicly to approach their fathers. Sect. 2. Note 3. 'Les enfans,' fays Charlevoix of the Americans, 'n'appartiennent qu' à la mere, et ne re-' connoissent qu' elles. Le pere est toujours com-' me etranger par rapport à eux.' "The chil-" dren only belong to the mother, and acknow-" ledge none but her. The father is always as a "franger with regard to them." Journ. Hift. It is our nature to be more attached to what is lovely and gentle, than to what is ftern and venerable. It is 'the foft green of the foul,' as an elegant writer expresses it, 'on which the ' eye delights to reft.'

[10] 'Septa pudicitia agunt, nullis spectaculo'rum illecebris, nullis conviviorum irritationibus
'corruptae. Litterarum secreta viri pariter ac se'nimae ignorant.' "They live, therefore, in a
"state of well-guarded chastity; corrupted by no
"seducing

" feducing spectacles, no convivial incitements. " Men and women are alike ignorant of the fe-

" cret methods of corresponding by letters." Ta-

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That knowledge and letters were incentives to corruption, we have also the opinion of Salluft, who, notwithstanding the freedom of his life, is a beautiful declaimer on the fide of morality. It is of Sempronia that he thus fpeaks: 'Literis Grae-' cis docta: Pfallere et faltare elegantius, quam ne-' cesse est probae: Multa alia norat, quae instru-' menta luxuriae funt, fed ei cariora femper omnia ' quam decus et pudicitia fuit.' " She was skilled " in Greek learning. She fung and danced with " greater elegance than was necessary for a mo-"deft woman. She possessed many other accom-" plishments introductory to voluptuousness; and " nothing gave her less concern, than her reputa-" tation or her chaftity." De Bel. Catilin.

[11] These things, which are curious, are illustrated by the following passage of Tacitus. 'Me-'lius quidem adhuc eae civitates, in quibus tan-' tum virgines nubunt, et cum spe votoque uxoris femel transigitur. Sie unum accipiunt maritum, ' quomodo unum corpus, unamque vitam, ne ulla 6 cogitatio ultra, ne longior cupiditas, ne tamquam ' maritum, fed tamquam matrimonium ament.' "Still more exemplary is the practice of those " flates in which none but virgins marry, and the " expectations and wishes of a wife are at once " brought to a period. Thus they take one huf-

" band as one body and one life; that no thought,

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"no defire, may reach beyond him; and he may be loved not only as their husband, but as their marriage." De Mor. Germ. c. 19.

The matrimonial fymbols, as was formerly obferved, Note 2. confifted chiefly of an interchange of arms; but, among those nations of the barbarians who, after their conquests, became accustomed to the manners of the Romans, this usage suffered an early innovation. The symbols of arms were often neglected for those of money. And the betrothing per folidum et denarium grew to be a fashion.

Thus, according to the Salic law, a virgin was married per solidum et denarium. 'Convenit ut ' ego te folido et denario fecundum legem Salicam ' fponsare deberem; quod ita et feci.' "It is a-" greed, that I ought to marry you according to " the Salic law with a shilling and a penny, and " I have done fo." Form. Solen. 75. ap. Lindenbrog. But it was not fo with the widow. The fymbols were augmented; and it is to be conceived, that their augmentation expressed that of the dower. ' Si quis homo moriens viduam dimiferit, et eam quis ' in conjugium voluerit accipere, antequam eam ' accipiat Tunginus aut Centenarius mallum indi-' cent, et in ipso mallo scutum habere debent, et ' tres homines causas tres demandare; et tunc ille ' qui viduam accipere vult, cum tribus testibus qui ' adprobare debent, tres solidos aeque pensantes et ' denarium babere debet.' "If any man dying " leaves a widow, and any one wishes to accept "her in marriage; before he may receive her, " the

"the magistrates * ought to call a head court, and in the court they ought to have a shield and three men to ask three reasons, and then he who wishes to accept the widow, along with three witnesses, who ought to approve, should have three shillings of equal weight and a penny."

Lex. Sal. t. 46. c. 1. The spirit of the German manners opposing second marriages, made it necessary to bribe, as it were, the modesty of the widow.

It deserves remark, that traces of the connection of disgrace with second marriages, as to the women, are to be found in almost all nations; and this circumstance, so favourable to the modesty of the sex; is a striking proof of their early importance. There were ages of the Grecian and Roman manners when this disgrace prevailed in all its force; and even among races of men the most savage, the immodesty of second marriages is repressed by particular usages.

'Chez les habitans des côtes de Cumana,' fays an ingenious writer, 'avant que de brûler le corpes 'du mari, on en fèpare la tête; on la porte á fa 'veuve pour que la main pofée dessus, elle juse 'de la conserver precieusement, et de ne jamais

' se remarier. Une veuve, chez les Caffres et les 'Hotentots, chaque fois qu'elle se remarie, est o-

' bligée de se couper un doigt.' " Among the in-" habitants of the coast of Cumana before burn-

" ing the body of the hulband, they feparate the

^{*} The Latin words are Tunginus aut Centenarius. Of these Du Cange gives a long definition not worth insertion in this place. Note by the Translator.

"head. They carry it to the widow in order"
that she may put her hand upon it and swear

" to preserve it preciously and never to re-marry.

" A widow among the Caffres and Hotentots eve-

"ry, time that she re-marries is obliged to cut off a finger." St Foix, Est. Hist. sur Paris, tom. 5. p. 177.

[12] The king, according to Domesday-book, demanded twenty shillings for the marriage of a widow, and ten shillings for that of a virgin. 'Mulier' accipiens quocunque modo maritum, 'si vidua' dabat regi viginti solidos, si puella decem solidos, quolibet modo acciperit virum.' "A woman ac-" cepting a husband in any way, gave, if a widow, "twenty shillings to the king, and if a virgin ten shillings." Domesd. tit. Scropesberie, ap. Spelman, voc. Maritagium. There is good evidence, that, in several cities of Germany, in the middle times sines were paid to the magistrate on the marriage of a widow. Hein. Elem. Jur. Germ. 1.1.1.10. \$222.

[13] Thus, the ravishing of a widow was punished more severely than that of a virgin. 'Si 'quis virginem rapuerit contra ipsius voluntatem 'et parentum ejus, cum. xl. sol. componat, et a 'lios xl. cogatur in sisco. Si autem viduam rapuerit 'quae coacta ex tecto egreditur orphanorum, et 'pro penuriae rebus, cum lxxx. sol. componat, 'et lx. cogatur in sisco.' "If any one shall de-"flower a virgin against the inclination of her parents and herself, he may compound for forty 'shillings, and forty additional must be paid to the Fisc. But if he deslowers a widow, who has been forced against her inclination, he shall,

"on account of her orphans, and her poverty, "compound for eighty shillings, and fixty to the "Fisc." LL. Baivvar. tit. 7. l. 6. 7.

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By the way, this early severity against rapes, is a strong confirmation of my general argument, and is direct against the opinions of my Lord Kaims and Mr. Millar. The reputation of semales suffering, in this way, was forever marked with difgrace. No suitors were now to court their alliance. Yet their minds had received no pollution, and their innocence could not be impeached. Their bodies, however, had been abused; and the loss of value attending this abuse, with the severe punishment of their violators, express clearly the high and natural importance of the sex.

In the Gentoo code, the confideration of the fex is also illustrated by laws too explicit to admit of doubt or cavil, and still more severe.

- 'If a man by force commits adultery with a woman of an equal or inferior cast, against her confent, the magistrate shall confiscate all his posfessions, cut off his penis, and castrate him, and
 cause him to be led round the city, mounted upon an ass.
- 'If a man, by cunning and deceit, commits adultery with a woman of an equal or inferior cast, against her consent, the magistrate shall take all his possessions, brand him in the fore-head with the mark of the pudendum muliebre, and banish him the kingdom.
- 'If a man by violence, or by cunning, or deceit, or against the woman's consent, commits adultery

adultery with a woman of a fuperior cast, the
magistrate shall deprive him of life.

'If a man, either by violence or with her con-'fent, commits adultery with an unmarried girl 'of a superior cast, the magistrate shall put him

' to death.' Code of Gentoo Laws, ch. 19.

[14] 'Singulis uxoribus contenti funt, exceptis 'admodum paucis, qui non libidine, sed ob nobi'litatem, plurimis nuptiis ambiuntur.' "They
"are contented with a fingle wise, a very sew ex"cepted, who practise polygamy, not from in"continence, but on account of their rank, being
"folicited to numerous marriages." Tacit. de Mor.
Germ. c. 18.

This, fays Montesquieu, explains the reason why the kings of the first race had so great a number of wives. These marriages were less a proof of incontinence, than a consequence of dignity; and it would have wounded them, in a tender point, to have deprived them of such a prerogative. This, continues he, explains, likewise, the reason why the example of our kings was not followed by their subjects. L'esprit des Loix, liv. 18. c. 25.

I know that my Lord Kaims has spoken of the polygamy of the Germanic nations; but the authority to which he appeals in proof of his notion, is the passage now cited from Tacitus, which is most directly against him. Sketches, vol. 1. p. 192. And indeed he has remarked, in another portion of his work, 'That polygamy was never known among the northern nations of Europe.' Vol. 1. p. 316. I am at a loss to reconcile these opini-

ons; and this ingenious author appears to have forgotten, that, in the states of Germanic and Gothic origin, there were even fevere laws against polygamy. L.E. Congob. l. 2. t. 13. l. 1. 3. 5. LL. Wifig. l. 3.

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The plurality of wives is a consequence of luxury and pride, and does not uniformly diftinguish rude times, even in climates which encourage and inspirit the passions. In general, one man is then connected with one woman, and fatisfied with her; and it is a proof of the antiquity of monogamy, that, when a plurality of wives is uniformly indulged, which happens not till the ages of property, there is always one of these who seems more peculiarly the wife; the rest appearing only as fo many concubines.

The appetite for the fex, it is to be observed, is not nearly fo ftrong in rude, as in cultivated times. Hardship and fatigue, the great enemies of inordinate love, waste the barbarian. 'Il est de 'l'ancien usage, says Lasitau, 'parmi la plûpart des ' nations fauvages, de passer la premiere annèe, a-' pres le marriage contracté, sans la consommer; ' . . . Et quoique les epoux passent la nuit en-· femble, c'est sans prejudice de cet ancien usage.' " Among the greatest part of favage nations, there " is an ancient custom, that they pass the first year " after marriage without confummating it. " And although the married couple pass the nights " together, it is without prejudice to that ancient " usage." Tome 1. p. 575. Ease and good living, on the contrary, flatter the fenses in the ages of property. And, an abstinence of this fort would, Bb

doubtless,

doubtlefs, furprife very much the most timid and

the most delicate of our virgins.

[15] The fortunate marriages of the relations of Dumnorix, are faid, by Caefar, to have conftituted a great proportion of his power. De Bell. Gall, lib. 1. c. 18. In the same author, there is the following notice concerning the wives of Arioviftus. ' Duae fuerunt Ariovisti uxores, una ' Sueca natione, quam domum fecum adduxerat;

' altera Norica, regis Vocionis foror, quam in Gal-

· lia duxerat, a fratre missam.' "Ariovistus had "two wives, one of the Suevic nation, whom he

" had brought with him from home, and the o-

" ther of the Noricans, the fifter of their king Vo-

" cion, whom he had married in Gaul, being fent

" him by her brother." De Bell. Gall. lib. 1. c. 53.

Tacitus fays expressly, that deliberations on the subject of marriage were frequent in the councils of a German state. De Mor. Germ. c. 22. And. in that fingular work, the Atalantica of Rudbeck, there is this passage. 'In conciliis Upsalensibus ' decretum fuit, ut Olaus Rex Sueoniae filiam fu-'am in matrimonio daret Olao Regi Norvagiae.'

" In the council at Upfal it was determined, that

" Olaus, king of Sweden, should give his daughter

" in marriage to Olaus king of Norway." P. 214.

[16] After the introduction of Christianity, a multitude of laws were enacted against incestuous marriages; and these prove, that little delicacy was previously paid to relation or descent. orem habere non liceat focrum, nurum, privig-

' nam, novercam, filiam fratris, filiam fororis, fratris and

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tris uxorem, uxoris fororem: Filii fratrum, filii fororum, inter se nulla praesumptione jungantur."

"It is unlawful to have as a wise, a mother-in"law, a daughter-in-law, a step-mother, the
"daughter of a brother or a sister, the wise of a
"brother, or the sister of a wise. The children
"of brothers, and the children of sisters, can be
"united on no pretence whatever." LL. Baivvar.
tit. 6. l. 1. See also LL. Longobard. lib. 2. tit. 8.
LL. Alaman. tit. 39. LL. Sal. tit. 14. l. 16.

In Scotland, about the year 1003, 'it was not ' uncommon,' fays my Lord Hailes, ' for a man to ' marry his step-mother, or the widow of his bro-'ther.' The learned and ingenious author adds, 'I prefume that this was not owing to vague luft, ' but to avarice; for it relieved the heir of a join-'ture.' Annals of Scot. vol. 1. p. 30. The observation is acute; but I am afraid that, though in fome inflances it might be just, it will not vindicate the Scots from the groffness and indecency which the prevalence of the custom fixes upon them. Even in France, at a later period, an. 1454, the Count D'Armagnac married publicly his own fifter. St Foix, Eff. Hift. vol. 5. p. 130. The strange liberties taken by ancient nations are sufficiently known. A Persian acted in conformity to the laws, and to justice, when he married his mother; and an Egyptian when he married his fifter.

In times of refinement and delicacy, virtue takes the alarm, even at the recital of fuch facts; but the philosopher, struck with their universality over all societies, however distant and distinct, is

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disposed to inquire, Where it is that nature has placed her barriers; and what, on this head, in the codes of nations, is to be explained by natural law, and what by a policy civil and religious? The topic is full of curiosity, but not for the prefent purpose.

CHAP. II.

SECT. I.

[1] The total change produced in the condition of Europe, by the settlements of the barbarous nations, is ascribed by many writers, and by Dr. Robertson in particular, to the destructive violence with which they carried on their conquests, and to the havock which they made from one extremity of this quarter of the globe to the other. History of Charles V. vol. 1. p. 11. 197. 198.

It is to be remembered, notwithstanding, that the conquerors incorporated themselves, in some provinces, with the vanquished; that much of the havock and violence so pompously described by ancient historians, is to be referred to the wars they carried on among themselves; and that, where havock and violence were least known, the change produced was, with the exception of a few circumstances, as general and complete as where they were experienced in the greatest degree. Thus, chivalry and the feudal institutions prevailed, in every step of their progress, in every country of Europe.

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In illustration, indeed, of his opinion, Dr. Robertfon has faid, that where havock prevailed in no great degree, as in England, on the Norman invasion, the ancient inhabitants retained their own manners. It is certainly very true, that the Anglo-Saxons retained their own manners. This, however, was no effect of the cause he has mentioned. The Norman revolution was not a conqueft*. A victory was obtained by Duke William over Harold and his followers; but no victory was obtained over the people of England. And, even on the hypothesis that the Duke of Normandy had conquered England, his illustration is without force. For the manners and policy of the Normans were the fame with those of the Anglo-Saxons; with this difference, that the former were, in some meafure, a more improved people.

The completeness of the revolution consequent on the settlements of the barbarians, is chiefly to be ascribed, as I observe in the text, to the immense difference of manners in the conquerors and the conquered. The former were in a condition of growing civility; the latter in a state of hopeless corruption. The German was approaching to persection: The Roman had been declining from it. They mutually despised one another, and were urged on in different directions. The former, therefore, yielding to, and governed by the manners to which he had been accustomed, became necessarily the sounder of new and peculiar establishments.

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^{*} See a Discourse prefixed to Dr. Sullivan's Lectures.

[2] 'Agri pro numero cultorum ab universis' per vices occupantur, quos mox inter se secundum dignationem partiuntur. Facilitatem partiendi camporum spatia praestant. Arva per annos mutant, et superest ager.' "The lands are occupied by turns, in allotments proportional to the number of cultivators; and are afterwards parcelled out among the individuals of the district, in shares, according to the rank and condition of each person. The wide extent of plain facilitates this partition. The arable lands are annually changed, and a part left fallow." Tacit. de Mor. Germ. c. 26.

This interesting information is well illustrated in the following relation from Caefar. 'Suevo-' rum gens est longe maxima et bellicofissima Germanorum omnium. Ii centum pagos habere dicuntur; ex quibus quotannis fingula millia armatorum, bellandi caufa, fuis ex finibus educunt. Reliqui domi manent: Pro se atque il-· lis colunt. Hi rurfus invicem anno post in ar-' mis funt : Illi domi remanent. Sic neque agri-· cultura, neque ratio, neque usus belli intermit-' titur: Sed privati ac separati agri apud eos nihil 'est: Neque longius anno remanere uno in loco ' incolendi causa licet; neque multum frumento, fed maximam partem lacte atque pecore vivunt, ' multumque funt in venationibus." " The Suc-"vi are by far the greatest and most warlike of "the German nations. They are faid to confift " of an hundred cantons; from which they draw " out every year as many thousands of armed " men,

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"men, for the fake of making war beyond their territories. The rest remain at home, and cultivate for the others and themselves. These again are, in their turn, in arms next year, and
the former stay at home. Thus neither agriculture, nor the discipline and practice of war
are intermitted; but there is no private and separate property of land among them: Nor is
it lawful for them to continue longer than one
year on the same spot, on account of cultivation. They subsist little upon corn; but chiefly upon milk and the sless of their slocks; and
much upon the chase." De Bell. Gall. lib. 4. c. 1.

[3] From some remarkable passages in Tacitus, it is to be gathered, that, even in his age, the Germans were beginning to have an idea of private property in land. This improvement would probably take place among the princes or chiefs, and in those districts which joined to the Roman frontiers; and it is to be conceived, that the portions of ground first appropriated, would be those around the cabbins or huts of individuals. For each hut was furrounded with an enclosure. And it was doubtless out of this enclosure that the German flave, being affigned land by his mafter. paid, in return, like a renant, a proportion of corn, cattle, or cloth. 'Ceteris fervis, non in 'nostrum morem descriptis per familiam ministe-'riis utuntur. Suam quisque sedem, suos pena-'tes regit. Frumenti modum dominus, aut pecoris, ' aut vestis, ut colono injungit: Et servus hactenus ' paret.' " The rest of their slaves have not, like

" ours,

"ours, particular employments in the family al"lotted them. Each is the master of a habita"tion and household of his own. The lord re"quires from him a certain quantity of grain,
"cattle, or cloth, as from a tenant; and so far
"only the subjection of the slave extends." Tacit. de Mor. Germ. c. 25. This appropriation of land, and exertion over it, would spread by degrees, and enlarge the notions of property.

In fact, it would feem, that this conduct was observed after the German conquests; and that the German enclosure, or the lands of the house, and the affignment of them to slaves or servants, were usual. A proprietor or noble retained, to be cultivated by his servants, for domestic use and hospitality, the land which was inter curtem, or within view of the house or hall. What was out of the view of the house or hall, was given out in tenancy. Hence, among the Anglo-Saxons, the distinction of inland and outland. The inland, was the land inter curtem, or the land of the house: The outland, was the land out of the view of the house. Brithic, the rich Anglo-Saxon,

^{* &#}x27;Inland, et Inlandum. Terra dominicalis, pars manerii 'dominica. Vox Saxonum, terram interiorem fignificans, 'nam quae colonis et tenentibus concedatur, utland dicta fuit, hoc est terra exterior, hodie tenementalis.' "The lands belonging to the lord, a part of the lord's manor. This is "a Saxon word, fignifying the interior grounds, for what is granted to servants and tenants was called outland; that is, "the exterior land; at this day, land in tenement." Spelman, Gloff. p. 316.

Saxon, had inland and outland, and disposed of them, in his will, to different persons *.

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What is worthy of observation, the method of paying in kind, practised in Germany, and mentioned by Tacitus, continued also in the settlements of the barbarians, and even after they had become acquainted with coinage. Thus, in estates which had been long in any family, there were payments in poultry, and in necessaries for the house. Du Cange Gloss. voc. Gallinagium et Henedpeny. At this hour, both in England and Scotland, there are relics of this usage.

In England, it was not till the age of Henry I. that the rents due to the crown were paid in money. 'In the early days,' fays Madox, ' next 'after the Norman conquest, (if we are rightly ' informed), there was very little money, in spe-' cie, in the realm. Then the tenants of knights · fees answered to their lords by military services; ' and the tenants in focage lands and demeanes ' (in great measure) by work and provisions. 'The ingenious author of the Dialogue concern-'ing the Exchequer tells us, that, from the time of the Norman conquest, till the reign of King · Henry I. the rents or farms due to the king were ' wont to be rendered in provisions and necessaries Cc ' for

^{*} Lambard, Perambulation of Kent. 'Lego,' fays Brithic, 'terras dominicales Wulfego, tenementales Ælfego.' I grant my dominical lands to Wulfego, my lands in tenement to Ælfego.'

* for his household*: And that, in King Henry
the First's time, the same were changed into money. Afterwards, in the succeeding times, the
revenue of the crown was answered or paid,
chiesty in gold and silver; sometimes in palfreys,
destriers, chascurs, leveriers, hawks, and salcons,
to wit, in horses, dogs, and birds of game of
divers forts), and in things of other kinds.'
Hist. of the Exchequer, vol. 1. p. 272.

[4] Allodial lands were enjoyed in full property, and are therefore opposed to feudal or beneficiary possessions, which were received with limitations, and under the burden of military service to the granters.

The Ripuarians, the Burgundians, and, indeed, all the barbaric nations, appear to have had lands of partition or allodial property. LL. Ripuar. tit. 56. LL. Angl. et Werin. tit. 6. LL. Baivvar. tit. 2. c. 1. l. 3. tit. 11. c. 5. tit. 17. l. 2. Capit. Kar. et Lud. lib. 3. l. 20. Marculph. Form. 16. 18. 51. 62. 67. ap. Lindenbrog.

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In the Saxon times of King Ina, the provisions paid for ten hides of land were as follows: 'Ex decem hydis, ad nutriendum, decem dolia mellis, trecenti panes, duodecim amphorae Wallicae cerevisiae, triginta simplices, duo adulti arietes, vel decem verveces, decem anseres, viginti gallinae, decem casei, amphora plena butyro, quinque salmones, viginti librae pondo pabuli, et centum anguillae solvantur.' 'From ten hides of land there shall be paid for maintenance, ten measures of honey, three hundred loaves of bread, twelve Welch sirkins of ale, two sull grown rams, or ten weathers, ten geese, twenty hens, ten cheeses, a firkin sull of butter, sive salmon, twenty pounds weight of sodder, and an hundred eels." LL. Inae ap. Wilkins, p. 25.

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Some writers affirm, that the Salic lands were lands of lot or partition, and yet contend that they were feudal. This is certainly an abfurdity. It is to be confessed, notwithstanding, that Du Cange, and many lawyers of great ability, have adopted this notion. Differt. 17. fur l'Histoire de St. Louis, p. 244. Selden, vol. 3. p. 1009 *. The authority against them is most express and pointed. It is the text itself of the Salic law which actually treats de alode, and refers to no property that was not allodial. LL. Sal. ap. Lindenbrog. p. 342. What confounded Du Cange, was the following celebrated law of this text. 'De terra vero Sali-' ca nulla portio hereditatis mulieri veniat; fed 'ad virilem sexum tota terrae hereditas perve-' niat.' " Of the Salic land no portion of heri-" tage can come to a woman; but the whole he-" ritage of land devolves on the male fex only." He knew that women could not, in the commencement of fiefs, pretend to lands which were held by a military tenure; and, as they are thus barred from the Salic lands, he thence conceived that these must be feudal.

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^{*} Selden observes, that 'the best interpretation of terra 'Salica, is by our knight's fee, or land holden by knight's fer'vice.' I have an infinite veneration for the learning and abilties of this great man. I cannot, however, but differ from
him on this occasion. The knight's fee and knight's service,
were late inventions in the history of fiefs, and cannot be
carried back to the early æra of the Salic law. Even if they
could, they would still be inessectual to support his conclusion.

But the circumstance of the exclusion of the women from the Salic lands is, by no means, to be accounted for on feudal principles. The women were excluded from property while the Germans were in their forests; and this law or usage they carried into their conquests. It is thence that, in the lands of lot or partition, the women, were not considered; and it is thus, that this difficulty in the Salic text is to be explained, without the necessity of conceiving the seudality of the Salic lands, in contradiction to the Salic law.

Though the barbarians respected highly their women, the admission of them to land was altogether a new idea. For if, leaving the Salic law, we inquire into the allodial property, and the allodial laws of the other tribes, we shall find, that, even in these, the women were not admitted to land while there existed any male. The ideas of the barbarians required to enlarge before this admiffion had place, and before they could fo far violate their ancient customs. The innovation, as might be expected, was gradual. In the title, accordingly, de Alodibus in the Ripuarian text, we read, ' Dum virilis fexus extiterit, femina in here-' ditatem aviaticam non fuccedat.' "While the " male line exists, no woman can succeed to " the inheritance of the family. Lindenbrog. p. 460. See also L.L. Anglor. et Werinor. tit. 6. It is, I conceive, by this and fimilar ordinances, that the celebrated Salic law, which imposed on Du Cange, and on fo many lawyers, is to be interpreted. Among the Salians and Franks, as well

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well as among the other barbarous nations, when there were no males, the women were admitted to the property of the lands of lot or partition.

After having made these remarks, it is sit I should give some account of the word Allodium, or Alode; and a learned judge, who is studious to cultivate literature in the intervals of business, and who has distinguished himself by laborious and instructive compositions in an idle and a dissipated age, has done me the honour to present me with the following communication on this subject.

'Al-od, in the Latin of the lower ages allodium; hence the adjective allodialis; and hence, from the analogy of language, allodially, and allodiality may be formed. Of Al-od the French had made Aleud, aleu.

'As to the etymology of the word, there is a 'variety of opinions; for learned men are apt to 'reject obvious etymologies, and to prefer those 'which are more remote. It would seem to be 'a good rule in such matters, that "the etymo-"logy which is nearest to the word, is the most "probable."

'Al is totus, integer, et absolutus. There is no occasion for proving this: The sense is in daily use
among the northern nations of Europe. Od is
ftatus, or, possession. The Scottish word had, and
the English bold, are derived from this source, and
the word itself is still visible in the English compounds, man-bood, sister-bood, maiden-bood, &c.
The Anglo-Saxon word, corresponding to this,
is Hod, status, or possession. Thus, Al-od, is totus
integer

integer et absolutus status, or tota integra et absolute possessio.

'The etymology of Al-od confirms the opinion

- of Selden and others as to the etymology of Fe-
- od, in the Latin of the lower ages Feodum, Feu-
- dum. Fe is beneficium or stipendium; Od or Hod,
- 'is status; therefore, Feod is status stipendiarius, or possessio stipendiaria. Odal is Alod inverted,
- · status integer, or possessio tota et absoluta.
 - 'There is no difference between odal and udal.
- 'The Scots turned the Norvegian ore, a denomi-
- ' nation of weight, into ure, and, in like manner,
- they turned odal into udal. If the Norvegian o
- ' was pronounced as oe, the change is fcarcely per-
- 'ceptible. After the same manner the French
- ' have turned alod into aleud.
 - 'It may be objected, that there are two fylla-
- bles more in allodial than in odal or udal; and
- ' that, although etymologists often drop an em-
- barraffing fyllable or two, yet that fuch liberties
- are not allowable. The answer is obvious. Al-
- · lodial is an adjective; and the word fubject, or
- ' land, or fomething fimilar, is understood. But
- odal or udal is a substantive; and it is only from
- ' ignorance or misapprehension, that the word is
- uted as an adjective. Thus, in propriety of
- ' fpeech, we fay, " The lands in Orkney are to be
- " confidered as udal;" although in common speech,
- 'we fay, 'The udal lands of Orkney,' and the
- " udal possession in Orkney."
- [5] Dr. Robertson has affirmed, that the barbarians, while in their original seats, were not, in consequence

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consequence of the condition of the landed property, brought under any positive or formal obligation to serve the community. Hist. of Charles V. vol. 1. p. 213.

It is obvious, however, that the partition of land received by the individual from the tribe, fubjected him to ferve the community. The perfon who did not ferve it had no claim to any par-Persons under the military age had no partitions, because they could give no service. Persons, who had attained this age, could give fervice, and entitle themselves to partitions. The former were parts of the family, the latter were members of the republic. See Note 2. and compare it with Tacit. de Mor. Germ. v. 13. Of this law of partition, it was even a consequence, that the coward was a criminal, because he could give no fervice, and was unable to entitle himself to a fublistence or partition. He was therefore deemed unworthy of existence, and put to death, or expelled beyond the frontiers of his nation. Tacit. de Mor. Germ. c. 12.

I have faid, that the lands of lot or partition, of which the grant or use was the distinction of the free-man and the citizen in the days of Tacitus, were also given after the conquests of the barbarians, under the general obligation of ferving the community. And here is my evidence.

'Quicunque liber homo a comite suo fuerit ad-'monitus, aut ministris ejus, ad patriam defenden-'dam, et ire neglexerit, et exercitus supervenerit 'ad istius regni vastationem vel contrarietatem,

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· fidelium nostrorum capitali subjaceat sententiae.

" If any free-man shall have been summoned by

" his lord or by his officers to the defence of his " country, and hath neglected to go, and an ar-

" my shall have come to the opposition and de-

" fruction of that country, he shall be liable to a

" fentence of death from our faithful fubjects."

Capitularia apud Baluz. tom. 2. p. 325.

'Si aliquis in alode suo quiete vivere voluerit,
'nullus ei aliquod impedimentum facere praesu-

' mat, neque aliud aliquid ab eo requiratur, nisi

' folummodo ut ad patriae defensionem pergat.

"If any one is disposed to live in peace upon his "own allodial property, no person shall presume

" to give him the smallest disturbance, nor shall

"there any other fervice be required of him un-

" less only that he shall hasten to the defence of

" his country." Capit. Car. Calv. Ibid. p. 264.

'Et qui ad defensionem patriae non occurrerint, 'fecundum antiquam consuetudinem et capitulorum

'constitutionem judicentur.' "If any have not

" come to the defence of their country, they shall

" be tried according to the ancient custom and

"the constitution of the laws." Capit. Car. Cal. tit. 36. c. 27. Ibid. p. 187.

Hence it is to be concluded, that the stipulation of serving the community was very ancient; and thus too, the opinion I maintain, that this obligation was known to the old Germans, receives a confirmation. In reality, the sense of the obligation must have been stronger before than after their conquests. The citizen of a small community

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nity enters with ease into its views, and is zealous to promote them. The arrangements, on the
contrary, of a great kingdom, are not easily perceived. A plain individual does not know the
motives and the agents which put every thing into motion. His attention is more turned from
the public, and penal regulations are necessary to
preserve him in his duty. History confirms this
remark. For, early after the barbaric conquests,
regulations of this kind were made; and allodial
proprietors, to avoid serving the community, devised the fraud of assigning their lands to the
church, and of holding them under its exemptions and immunities.

Those, it is observable, who held possessions merely allodial, could only be called out in so-reign wars, and against the enemies of the state. As they held of no superior or lord, they had no concern in private quarrels, and made no part in the seudal association. This circumstance, if judged by modern ideas, was advantageous. It was, in fact, however, the reverse, and operated as a cause of the conversion of allodium into tenure.

[6] Monser. Bignon, in his notes to Marculphus, expresses, with a delicate precision, the distinction between allodial lands, or the lands of partition, and the lands of the fisc. 'Omnia namque' praedia, aut propria erant, aut fiscalia. Propria feu proprietates dicebantur quae nullius juri ob-

' noxia erant, sed optimo maximo jure posside-

bantur, ideoque ad heredes transiebant. Fisca-

'lia vero, beneficia sive sissi vocabantur, quae a

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· rege

* rege ut plurimum, posteaque ab aliis, ita concedebantur, ut certis legibus fervitiifque obnoxia. cum vita accipientis finirentur.' " Every ac-" quifition of land confifted either of the lands of " partition, or of the fife. Those were called the " lands of partition or of property, which were " fubject to no vaffalage, but were poffeffed by "the greatest and most complete right, and so " passed to heirs. The fiscal lands, therefore, or " the beneficiary lands of the fife, as they were " called, were those granted at first, for the most " part by the king, but afterwards by others; " and which were liable to certain regulations and " fervitudes, and reverted to the granter on the " death of the accepter." Not, ad Marculph. ap. Baluz. tom. 2. p. 875.

It is even from fiscus that the term fief was formed; and, though the lands of the fisc meant originally only the benefices granted out by the sovereign, they came to express the subinfeudations of the crown-vassals. Du Cange, voce Fiscus, Munus Regium. Assiste et bons usages du Royaume de Jerusalem, avec des notes par Gaspard Thaumas de la Thaumassiere, p. 103. 245.

[7] 'Principes jura per pagos vicosque reddunt.

'... Insignis nobilitas aut magna pa'trum merita, principis dignationem etiam ado'lescentulis assignant. Ceteris robustioribus ac'jampridem probatis aggregantur.

'Magna comitum aemulatio, quibus primus apud
'principem suum locus; et principum cui pluri'mi et acerrimi comites. Haec dignitas, hae vires,
'magno

magno femper electorum juvenum globo circumdari, in pace decus, in bello praefidium. · Cum ventum in aciem, turpe principi virtute vinci, turpe comitatui virtutem principis non adaequare. . . . Illum defendere, tueri, fua quoque fortia facta gloriae ejus affignare, praecipu-'um facramentum est. Principes pro victoria ' pugnant; comites pro principe.' "The chief-" tains decide causes in the cantons and villages. The dignity of chieftain is be-" flowed even on youths, where their descent is " eminently illustrious, or their fathers have per-" formed fignal fervices to the public. The reft " are affociated with those of mature strength and "approved valour. . . . There is a great " emulation among the companions, which shall " posless the highest place in the favour of their " chief; and among the chiefs, which shall ex-" cel in the number and valour of their compa-" nions. It is their dignity, their strength, to be " always furrounded with a large body of felect " youth, their ornament in peace, their defence " in war. . . . In the field of battle, it is "difgraceful for the chief to be furpaffed in va-" lour; it is difgraceful for the companions not to " equal their chief. . . . To aid, to pro-" tect him; to place their own gallant actions to " the account of his glory, is their first and most " facred engagement. The chiefs fight for vic-"tory; the companions for their chief." Tacit. de Mor. Germ. c. 12. 13. 14.

[8] Of the notion that tribes were the vasfals

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of

of tribes, I have exhibited the most convincing proofs in another treatise. Hist. Dissert. concerning the Antiq. of the Eng. Constit. part 2. As the subject, however, is highly curious and important, I shall here offer some additional observations concerning it.

The great bond of the confederacies, and the attachments of the states of the Gauls and Germans, was the land affigned by a fuperior community to an inferior one. In consequence of this affignment, the latter owed fervice in war to the former, and was entitled to its protection. In the language of Gaefar, it was the client tribe. While land was yet the property of nations, and unconnected with individuals, the idea was natural, and almost unavoidable. Ariovistus, a prince of a German community, having, with his chiefs and retainers, made a conquest in Gaul, the territory of the vanquished people became the property of his nation; and, it was about to bestow a large tract of the acquifition on the Harudes, under the burden of their military aid or affiftance, when Caefar interfered in the Gaulic affairs. Cafar, de Bell. Gall. lib. 1. c. 35-46.

The idea of tribes in union, without their mutually furnishing protection and assistance, and without the medium of a grant of land, could not be conceived by the German and Gaulic nations. The client or vasfal tribes of Ariovistus, were the Marcomani, Tribocci, Vangiones, Harudes, Nemetes, and Sedusii. Casar, de Bell. Gall. lib. 1. c. 51. The Ubii, at one period, were the vasfal tribe

tribe of the Suevi. Ib. lib. 4. c. 3. In an after period, when the Romans imitated the manners of the Gauls and Germans, they were affigned land on the banks of the Rhine, under the obligation of military fervice. 'Super ipsam Rheni 'ripam collocati, ut arcerent, non ut custodiren-'tur.' "They were fettled upon the banks of the "Rhine, not that they might be guarded them-" felves, but that they might ferve as a guard a-" gainst invaders." Tacit. de Mor. Germ. c. 28. Caefar, at the request of the Ædui, permitted the Boii to remain in Gaul; and they became the clients or confederates of that people, who affigned them land on their confines. 'Boios, petentibus ' Æduis, quod egregia virtute erant, ut in finibus ' fuis collocarent, concessit; quibus illi agros de-' derunt.' " Upon the request of the Ædui, he " permitted the Boii, who were of diftinguished " valour, to fettle in their territories, and to whom " they granted land." De Bell. Gall. lib. 1. c. 28. The extent of land allotted by a fuperior community to an inferior one, was proportioned to the numbers and the valour of the latter. And. it was this way of thinking which actuated the Helvetii, when they faid, that their territories were not fuited to their populousness and military glory. ' Pro multitudine autem hominum, et pro ' gloria belli atque fortitudinis, angustos se fines ha-' bere arbitrabantur.' "They imagined that their " territories were too narrow for the greatness of "their numbers, and their reputation and bra-" very in war." Ib. lib. 1. c. 2.

Thus, the state of land among the Gaulic and German nations, directed their political condition. This circumstance escaped not the Romans; and the use made of its knowledge by the Emperors. though little attended to, is worthy of remark. To a body of the Vandals, Constantine, with a view to the aid of their arms, affigned a portion of Pannonia. The affignment of land by the Romans to the Burgundians, that they might affift them in opposing the Wisigoths, gave rife to the Burgundian empire in Gaul. And Justinian granted the lands and possessions of the Ostrogoths in Pannonia to the Longobards, under the burden of their defending that country against the Gepidae, the Heruli, and other barbarous nations. Journal. de Reb. c. 22. Caffiodor. Chron. Procop. lib. 3.

Amidst a multitude of examples, to the same purpose, which might be produced, it is proper to take notice of the monarchy of the Franks. Different nations, overpowered by the Franks, became parts of their monarchy, by receiving possessions from them, and acknowledging their fuperiority. For the lands and protection afforded them, they gave allegiance and fervice. other respects they acted under their own dukes or princes, and under their own institutions. fpeak of the principalities or duchies of Bavaria, Aquitain, and Suabia. The Bojoarii, Bojarii, or Boii, for fo the Bavarians are called in the writers of the middle ages, were conquered by the Franks, and, accepting lands from them, acknowledged

knowledged their fuperiority. An old historian, recording this transaction, has these words: 'In bellis auxilio Francis funt Boii; eosdem pro amicis et hostibus habeant; ceterum suis institutis ac moribus liberi vivant.' "The Boii are auxi-" liaries in war to the Franks. They have the " fame friends and enemies; but in other respects " they live free according to their own laws and " customs." Aventinus, Annal. Boior. lib. 3. This connection or vaffalage is even expressed in their laws. LL. Baivvar. tit. 2. c. I. ap. Lindenbrog. p. 404. Such also was the case of the Dukes of Aquitain and Suabia. Under the Franconian kings of the first race, they owed fidelity and military fervice in war, for the lands they enjoyed. and yet governed in their own dominions. These things mark the attachment of nations to their ancient usages, and illustrate the idea that communities were first the vasfals of communities.

What is not incurious, one of the greatest difficulties in developing the history of the barbaric tribes, has its source in these connections I have mentioned. The inferior, or vassal tribes, are often meant and recorded under the names of the superior ones. Thus, under the general appellation of Gothi, there are included the Thuringi, Gepidae, Pucini, Scirri, and other tribes. The historical confusions that were necessarily to arise from this practice are many, and often not to be disentangled.

[9] It is observable, that the old German states affected, from grandeur, to have around them a vast

vast extent of waste territory. 'Una ex parte a 'Suevis circiter millia passuum DC agri vacare dicuntur.' "On one side of the territories of the "Suevi, there is said to be a desart to the extent of six hundred miles." Casar, de Bell. Gall. lib. 4.

c. 2. 'Civitatibus maxima laus est quam latissimas circum se vastatis sinibus solitudines habere.'

"It is the greatest praise for their states, to have the widest tracts of solitude and desolation a
"round their territories." Id. lib. 6. c. 22. 'Bella cum finitimis gerunt, ut quae circa ipsos jacent vasta sint.' "They carry on war with their neighbours, that the lands around their ter
"ritories may lie waste." Mela, lib. 3.

What is remarkable, after land was connected with individuals, and when chiefs distributed portions of their possessions to their followers, they affected also wastes of this kind. The lord of a manor, after having affigned to his fervants a tract of ground for the maintenance of his house and hospitality, gave out other divisions to his vasfals and tenants, for the support of his political greatness; and these purposes being answered, a large proportion of territory remained often unemployed by him. This waste dominion gave an idea of his power, and ferved to excite, in the ftranger, a fentiment of terror. On this tract of land, the inhabitants of the hamlet, connected with his caftle, were tempted to feed their cattle. In the course of time, he lost all connection with it. Their connection was recent and in use. common pasture and commons.

I will venture another conjecture. It was, perhaps, from the idea of magnificence attending the possession of a vast portion of uncultivated territory, more than for the purposes of hunting, that the kings of Europe affected, of old, to have extensive forests. A deer-park is still flattering to the magnificence of the rich, in proportion to its extensiveness; though hunting be no amusement of the proprietor.

[10] It has puzzled the learned to discover the nation of the barbarians which first gave a beginning to siefs. No inquiry could be more frivolous. In all of them they must have appeared about the same period. And they prevailed in all of them in consequence of the similarity of their situation on their conquests, and in consequence of their being governed by the same customs. It is not, therefore, to the principle of imitation that their universality is to be ascribed.

The annals of France make mention of fiefs in the age of Childebert. The Longobards, at an early period, introduced them into Italy; and the customs and laws which relate to them seem to have advanced rapidly among this people. Giannone, Hist. of Naples, book 4. sect. 3. In England, there is little doubt that the feudal law was known in the Saxon times; and on this subject I refer, with pleasure, to what has been lately advanced by Mr. Whitaker, in his history of Manchester; a book valuable for deep learning, original thought, and uncommon ingenuity.

In Spain, the introduction of the feudal tenures

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preceded the devastations of the Saracens or Moors, which began in the year 710. Among the Goths, who established the monarchy of Spain, lands were granted for service and attachment; and the receiver was the retainer of the granter. He was said to be in patrocinio; and, if he refused his service, he forseited his grant. It also appears, that the retainer, or vassal, swore fealty to his patron or lord. And it was on this scheme that their militia was regulated. LL. Wisigoth. lib. 5. tit. 3. 4. tit. 7. l. 20.

The Wifigothic laws were first published by the celebrated Pithoeus, and are chiesly to be valued on account of their high antiquity. But how they came to survive the Moorish conquests, is an incident which I cannot explain. They served as the mine, and gave materials for the code of Spanish jurisprudence, termed the forum judicum, or the fuero juxgo; a circumstance which seems to prove their authenticity, and which the learned Mr. Barrington must have forgot, when he conceived the latter to be the most ancient collection of laws in Europe. Observations on the Statutes, 3d edit. p. 9.

SECT. II.

[1] 'Terra. pecorum foecunda, sed 'plerumque improcera: Ne armentis quidem suus 'honor, aut gloria frontis: Numero gaudent: 'Eaeque solae et gratissimae opes sunt.' "The "country is fertile of cattle, but in general of a "fmall

" small breed. Even the beeve kind are destitute " of their usual stateliness and dignity of head.

"They are, however, numerous, and form the

" most esteemed, and indeed, the only species of

" wealth." Tacit. de Mor. Germ. c. 5.

[2] My Lord Kaims afcribes to the meanness of women, and to the disgrace in which they are held, their want of property in rude times. They appear, notwithstanding, to be in high estimation in such times; and their poverty, we see, or their want of property, is no mark or consequence of their meanness and disgrace; but a result of the nature of things. Sketches, vol. 1. p. 203.

[3] The eldest fon, it would appear, came in place of the father, and continued the family. 'Inter familiam,' fays Tacitus, ' et penates, et ' jura fuccessionum, equi traduntur: Excipit filius 4 non ut cetera maximus natu, fed prout ferox bello 'et melior.' "Horses are solemnly bequeathed " by parents along with the domestics, the house-" hold goods, and the rights of inheritance: They "do not, however, like other things, go to the eld-" eft son, but to the bravest and most warlike." De Mor. Germ. c. 32. This testimony in favour of the eldest fon, and the right of primogeniture, is the more flrong, as being included in an exception to the general rule. I know that Sir Henry Spelman, in his Gloffary*, Mr. Harris, in his Hiftory of Kent +, Mr. Lambard, in his Perambulation Eeij of

^{*} Voc. Gaveletum.

of the same county*, and Mr. Barrington, in his Observations on the Statutes†, have given it as their opinion, that, in Germany, the sons succeeded equally to the father; and it is common to account, in that way, for the origin of the custom of gavel-kind‡, which prevailed in Kent, and in other counties of England. The words, however, of Tacitus already cited are a demonstration of the impropriety of these notions.

It is true, notwithstanding, that the authors under remark found or rely upon another passage of the same writer; but I conceive that the sense of it must have escaped them. The passage is as follows. 'Heredes successoresque sui cuique liberi; Et nullum testamentum: Si liberi non sunt, 'proximus gradus in possessione, fratres, patrui, 'avunculi.' "A man's own children are his heirs "and successors; and no wills are made. If there "are no children, the next in order of inheritance "are brothers, paternal and maternal uncles." De Mor.

* P. 584. + P. 115. 3d Edit.

[†] Gaveletum, Gavel-kind.] Prisca Anglo-Saxonum confuetudo e Germania delata, qua omnes filii ex aequis portionibus, patris adeunt haereditatem (ut filiae folent, prole
mascula deficiente). Fratres similiter defuncto sine sobole
fratre, et nullo existente fratre, sorores pariter.' "An ancient custom brought by the Anglo-Saxons from Germany,
by which the sons succeed to their father's inheritance in
equal portions; as daughters are wont to do when the male
line fails. Brothers thus succeed when a brother has died
without issue; and in the same manner sisters succeed when
there is no brother at all." Spelm. Glass. p. 259.

Mor. Germ. c. 20. Here, in reality, even allowing that the Germans had been acquainted with a property in land, which they constantly suppose, there is no mention of the equal partition of it. The children must have succeeded singly and in course; in defect of these, the brothers; and, on the failure of them, the uncles.

This passage, and the former, throw mutually a light to one another; and, from the consideration of both I think it clear, that the meaning I impute to them is justly to be inferred.

A difficulty, however, more knotty prefents itfelf. As land was among these nations the property of the state, to what does Tacitus allude in the paffage before us? Conjectures are to be hazarded where proofs are wanting. In general, I should fancy, he must refer to moveables; and, perhaps, he may allude to the German bouse and the enclosure connected with it. 'Colunt discreti, ' ac diversi ut fons, ut campus, ut nemus placuit. Suam quisque domum spatio circum-' dat.' " Every one furrounds his house with a " vacant space." Tacit. de Mor. Germ. c. 16. At least, it is not unnatural to think, that the cabbin and its enclosure, as the ideas of property evolved, might be confidered as appertaining more peculiarly to individuals, and that thence continuing in their possession, they might go to their posterity.

It was thus in other rude communities. Among the Hindoos, it appears, by very curious laws, that the landed property first acquired by individuals. duals, was what is termed 'The glebelands, houses, and orchards.' Gode of Gentoo laws, eb. 3. In Otaheite, and in Eastern Island, or Davis's Land, there were plantations laid out by line, of which the beauty struck Captain Cook. These, he conjectures, were the private property of the chiefs. Voyage round the World, vol. 1. p. 294. His conjecture is very solid. These spots correspond to the enclosure of the German house, and to the glebelands of the Gentoo.

[4] 'Dotem non uxor marito, fed uxori maritus offert.' "The wife does not bring a dowry to "her husband, but receives one from him." Tacit. de Mor. Germ. c. 18. This remarkable usage continued after the German nations had made conquests, and is every where to be met with in their laws.

'Non amplius unusquisque in puellae vel muli-'eris nomine dotis titulo conferat vel conscribat, 'quam quod decimam partem rerum suarum esse 'constiterit.' "A person may not give or trans-"fer in the name of a dowry to a woman or a girl "more than what constitutes a tenth part of his "property." LL. Wisigoth. lib. 3. tit. 1. l. 5.

Quia mulieres, quibus dudum concessum suerat de suis dotibus judicare, quod voluissent,
quaedam reperiuntur, spretis filiis vel nepotibus,
eastdem dotes illis conferre, cum quibus constiterit nequiter eas vixisse: Ideo necesse est illos
exinde percipere commodum pro quibus creandis
fuerat assumptum conjugium. Denique constituentes decernimus, ut de dote sua mulier habens

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· filios vel nepotes, seu causa mercedis ecclesiis vel · libertis conferre, five cuique voluerit, non am-' plius quam de quarta parte potestatem habeat. ' Nam tres partes legitimis fihis aut nepotibus, seu ' fit unus five forfitan plures, absque dubio relic-' tura est. De tota interim dote, tunc facere quid voluerit, erit mulieri potestas, quando nullum ' legitimum filium, filiamve, nepotem vel neptem ' fuperstitem reliquerit. Verum tamen faeminas, ' quas contigerit duobus viris aut amplius nubere, ' atque ex eis filios procreare, non eis licitum erit ' dotem ab alio marito acceptam, filiis aut nepoti-' bus ex alio viro genitis dare : Sed unufquifque ' filius filiave, nepos aut neptis, ex ipfa linea pro-' creati, dotem quam avus aut pater illorum concef-' ferat, post mulieris obitum per omnia consequu-' turi funt.' " Whereas it was long fince granted " to women to dispose at pleasure of their dowries, " fome are now found who, neglecting their fons " and grandfons, confer the same dowries upon those " with whomit is well known that they have lived " in infamy; therefore it is necessary that those " should partake of the advantages of marriage " for the birth of whom it was commended. "Hence we appoint and ordain, that a woman " having fons or grandfons, shall not have power " over more than a fourth part of her dowry to "dispose of it upon any account to the church, " to a free man, or to any other person whom she " favours; for she must, without doubt leave three " parts to her legitimate children or grand-chil-" dren, whether there be one or more: But in the

"mean time, she shall have authority to dispose as she thinks proper of her whole dowry when the has no legitimate surviving son or daughter, grand-son or grand-daughter: But yet women who happen to marry two or more husbands, and not have children by them, shall not be alwined to give the dowry obtained by one husband to the children or grand children of another; but every son or daughter, grandson or grand-daughter descending in the direct line, shall ob-

" tain the dowry which their grandfather or father " had bestowed, after the death of the woman."

LL. Wifigoth. lib. 4. tit. 5. l. 2. ap. Lindenbrog.

'Mulier si ad alias nuptias transierit, omnia 'perdat: Dote tamen sua quam a marito suo ac'ceperat, quamdiu vixerit, utatur, silio proprie'tate servata.' "A woman when she passes to a
"fecond marriage forseits every claim, only, the
dowry which she received from her husband she
"may enjoy during her life; but the reversion
falls to her son." LL. Burgund. tit. 62. l. 2.
See farther LL. Wisigoth, lib. 3. tit. 2. l. 8. lib. 5.
tit. 2. l. 4. LL. Ripuar. tit. 37. LL. Saxon. tit. 7.
LL. Longobard. lib. 1. tit. 4. The curious reader
may also consult the forms or writings which constituted the dos, or dower. Form. Solen. ap. Ba-

In England, the doctrines and history of the dos are to be seen in Glanvil, Bracton, Briton, in the book called Fleta, and in Littleton. 'Dos or 'dower,' says my Lord Coke, 'in the common 'law, is taken for that portion of lands or tene"ments

luz. tom. 2. See Appendix, No. 1.

ments which the wife hath for terme of her life of the lands or tenements of her husband after his disease, for the sustenance of herselse, and the nurture and education of her children. Instit. p. 31. It is curious to find in the woods of Germany, a rite or custom that makes a figure in all the laws of Europe.

My Lord Kaims, whom I am ashamed to contradict fo often, has ftrangely mifunderftood this fubject. 'In Germany,' fays he, 'when Tacitus wrote, very few traces remained of polygamy. 'Severa illic matrimonia, nec ullam morum par-' tem magis laudaveris; nam prope foli barba-' rorum fingulis uxoribus contenti funt, exceptis ' admodum paucis, qui non libidine, fed ob nobi-' litatem, plurimis nuptiis ambiuntur. When po-' lygamy was in that country fo little practifed. we may be certain, the purchasing wives did not ' remain in vigour. And Tacitus accordingly, * mentioning the general rule, dotem non uxor e marito, fed uxori maritus offert, explains it a-' way by observing, that the only dos given by 'the bridegroom, were marriage prefents, and that he at the same time received marriage-pre-' fents on the bride's part.' Sketches, vol. 1. p. 192.

It would pain me to open up, with minuteness, all the mistakes which are crowded into this passage. I shall just glance at them. Polygamy, in fact, never prevailed among the Germans; and of this, the treatise of Tacitus, and the laws of the barbarians after their conquests, are the most striking and decisive proofs. See Ch. 1. Sect. 3. Note 14.

Neither were women bought in Germany, nor does Tacitus affirm, that the dos confisted of marriage presents. The interchange of presents by the married couple and the dos, were separate and distinct. The intention of the former I have already explained. See Ch. 1. Sect. 3. Note 2. What the latter was, I have just now said; and I appeal to the authorities which support my notion.

The fource of all these errors is, the idea entertained and inculcated by this eminent writer, that the women, in rude times, are of so little consideration, that they are objects of traffic. Hence he conceived, that the dos must be the purchase-money of the wise. That it was not so, we have seen; but, as the opinion has been pretty generally received, and has got the sanction of Professor Millar, as well as that of his Lordship, it is proper to consider its propriety with some attention.

Though it every where appears, from the examination of the barbaric laws, and from the books of the earliest lawyers, that the dos or dower was the provision allotted for the maintenance of the wife, it is not to be denied, that, in ancient legal monuments, there occur the expressions donation nuptialis, pretium uxoris, et pretium dotis. And these, I perceive, have contributed to induce Mr. Millar to go into the fancy, that anciently, in Europe, the dos was the price, or purchase-money of the wife. Observations on the Distinction of of Ranks, p. 30. 2d edit. If, however, I am not very widely mittaken, these expressions apply, in no

express the purchase-money of the wise; but express the provision made for her, in the event of the death of her husband. This, I think, appears from the laws of the barbarians.

'Si qua mulier duntaxat Burgundia post mariti mortem ad fecundas aut tertias nuptias, ut adfoelet fieri, fortaffe transierit, et filios habuerit, ex omni conjugio, donationem nuptialem dum advivit ufu fructu possideat: Post ejus mortem ad unum-' quemque filium, quod pater ejus dederat, revertatur: Ita ut mater nec donandi, nec vendendi, ' nec alienandi de his rebus quas in donatione nup-' tiali accepit, habeat potestatem.' " If any wo-" man of Burgundy, to wit, after the death of her " husband, as fometimes comes to pass, happens " to enter into a fecond or third marriage, and " has children by each of them, she shall en-" joy the personal use of the nuptial present " during her life: But after her death, the pro-" perty shall return to each of the children re-" fpectively, which his father had given to her, " fo that the mother shall have no right to give, " to fell, or dispose of that property which she re-" ceived in nuptial prefents." LL. Burgund. t. 24. It is faid of one Folco, that he gave to his wife Gerlint all he had; 'Omnia fua propter pretium in mane quando furrexit.' " All his property as "a prefent, in the morning when he arofe." Giannone, Hist. of Naples, vol. 1. p. 274. But this was not the price or value of the wife. It was

the morgengabe, or morning-prefent, about which there is fo much in the barbaric laws, and of which the extravagance was fo great, that regulations were made to repress it.

As to to the expression, pretium dotis, we meet with it in the following ordinance. 'Si puella in-' genua ad quemlibet ingenuum venerit ea condi-'tione, et eum fibi maritum acquirat, prius cum · puellae parentibus conloquatur; et si obtinuerit, 'ut eam uxorem habere possit, precium dotis parentibus ejus, ut justum est, impleatur.' "If " any free born girl hath come in to a free man, " before he has converfed with her parents upon " this condition, that she is to obtain him for a " husband; and if he shall have obtained leave " to possess her as his wife, the nuptial gift shall " be given, as is just, to her parents." LL. Wifigoth. lib. 3. tit. 2. l. 8. The dower, it feems, was at times given to the parent, or to the relation of the woman, to be kept for her use. This is fully explained by the regulation which follows. ' Do-' tem puellae traditam pater exigendi vel confer-' vandi ipfi puellae habeat potestatem. Quod si ' pater aut mater defuerint, tunc fratres vel prox-' imi parentes, dotem quam susceperint, ipsi con-' forori suae ad integrum restituant.' "The fa-" ther of the girl shall have authority to examine " and preserve the nuptial dowry. But if the fa-" ther and mother shall die, then the brothers or " nearest relations shall restore entire to their kins-" woman the dowry which they had taken." LL. Wifigoth. lib. 3. tit. 1. l. 6. ap Lindenbrog.

I know that the custom of presenting money at marriages came to prevail among the German and Gothic

Gothic nations, and among the Franks more particularly. In Fredegarius, for example, we read this description of the espousals of Clotildis. ' Le-' gati offerentes folidum et denarium, ut mos est 'Francorum, eam partibus Clodovci sponsant.' "The ambaffadors bringing a shilling and a pen-" ny, as is the cuftom of the Franks, espoused her " on the part of Clodoveus." Geft. Franc. c. 18. Let us not, however, be deceived. Here no purchase was made. The money presented was only the fymbol of a contract. This is illustrated by the Arra nuptialis of the Wifigoths. 'A die la-' tae hujus legis decernimus, ut cum inter eos qui disponsandi funt, sive inter eorum parentes, aut ' fortasse propinguos, pro filiorum nuptiis coram ' testibus praecesserit, definitio, et annulus arra-' rum* nomine datus fuerit vel acceptus, quamvis scripturae non intercurrant, nullatenus pro-' missio violetur, cum qua datus est annulus et definitio facta coram testibus.' "From the day "that this law has passed, we ordain, that when " between those who are about to be married, or between their parents, or perhaps, their rela-"tions, a verbal agreement before witnesses, " concerning the marriage has taken place, and a "ring, in name of arles has been given and ac-" cepted; though no writings intervene, yet the " promife shall by no means be violated with which

^{*} Arrhes or arres in France, earnest in England, and arles in Scotland, still express the money advanced in token that a bargain is concluded.

"which there was given a ring, and a verbal a-"greement in prefence of witnesses." LL. Wisigoth. lib. 3. tit. 1. l. 3.

But what refutes, in the most decisive manner, the notion that the wife was purchased with the money of the husband, is the following peculiarity. If a free man married his flave, and intended that his children by her should succeed to his fortune, it was necessary that he should make her a present of her liberty. And, what is remarkable, one of the methods of making her free, was the very act which is talked of as buying the property of the wife; it was the affigning her a dower or a morgengabe. 'Si quis ancillam fuam pro-' priam matrimoniare voluerit fibi ad uxorem, fit ei licentia: Tamen debeat eam liberam thingaere, et sic facere liberam, quod est Widerboram, et legitimam par garathinx, id est, per liberta-' tis donationem; vel per gratuitam donationem, ' id est morgengabe; tunc intelligatur esse libera et legitima uxor, et filii qui ex ea nati fuerint 'legitimi heredes efficiantur.' "If any man has a " mind to marry a female flave, his property, as his " wife, it shall be lawful: But yet he ought to " make her free and legitimate by the gift of her " liberty, or by a gratuitous donation; that is, by " a morgengabe, then it will be understood that " fhe is a free and lawful wife; and the children " who are born of her will become lawful heirs." LL. Longobard. lib. 2. tit. 1. l. 8. Among the Longobards the dower and the morgengabe came to be fynonymous, and were fixed at the fourth

of the substance of the husband*. LL. Longo-bard. lib. 2. tit. 4.

I might confirm these remarks by attending to the manners and customs of other nations. Among the inhabitants, for example, of Hindostan, while

* A very fingular exception, to the doctrine I advance in this note, is to be found in the records of England, and I am furprifed that it has escaped the learned industry of the writers whom I venture to oppose. I trust, notwithstanding, that my general conclusion is not to be affected by it. The case, however, is so odd, that I will give it to the reader in the words of my author.

' John Camois,' fays Camden, ' fon of Lord Ralph Camois, ' (a precedent not to be paralleled in that or our own age). out of his own free will (I speak from the parliament rolls themselves, Parl. 30. Ed. I.) gave and demised his own wife, Margaret, daughter and heir of John de Gaidesden. to Sir William Paniel, knight; and to the same [William] " voluntarily gave, granted, released, and quitelaimed, all the goods and chattels which she had, or otherwise hereafter might bave, and also whatever was in his hands, of the aforesaid 'Margaret's goods and chattels, with their appurtenances. So as neither himself, nor any other in his name, might, nor forever ought to claim or challenge any interest in the aforesaid Margaret, from henceforth, or in the goods or chattels of the ' faid Margaret: Which is, what the ancients faid in one word, ut omnia fua fecum haberet, that they should take away with her all that was her's. By occasion of which grant, when she demanded her dower in the manor of Torpull, an effate of John Camois, her first husband, there commenced a memorable fuit. But she was cast in it, and fentence passed, that she ought to have no dower from thence. Britannia, vol. 1. p. 205.

Even this example, however, of the sale of a wife, confirms the idea I inculcate as to the dos or dower. 1

while they were in a fimilar state of manners with the barbaric tribes the ordinances and usages in matrimonial concerns, have a striking conformity with those I have now described. This is evident from the code of Gentoo laws*.

- 'The woman's property,' fay these laws, 'is 'whatever she receives during the ayammi shadee, 'the days of marriage.
- 'When a woman dies, then, whatever effects' fhe acquired during the ayammi shadee, even
- ' though she hath a fon living, shall first go to her "unmarried daughter; if there is but one unmar-
- ried daughter, she shall obtain the whole; if
- there are feveral unmarried daughters, they all
- ' shall have equal shares.'

Here there is clearly the dower of the barbarians, and its destination on the decease of the wife, in a given or supposed situation. There is something more. For the woman, among the Hindoos, as well as among our barbarians, might acquire other property beside the dower, during the days of marriage. This is illustrated by the following regulations.

The woman's property among the Hindoos is also 'whatever she may receive from any person, 'as she is going to her husband's house, or coming 'from thence.

- 'Whatever her husband may at any time have 'given her; whatever she has received, at any 'time
- * Or ordinations of the Pundits, from a Persian translation made from the original, written in the Shanserit language. London, printed in the year 1776.

time, from a brother; and whatever her father and mother may have given her.

'Whatever jewels or wearing apparel she may have received from any person.'

Here we have, obviously, the marriage-presents of the relations and friends, as among the barbarians; and, in the gifts of the husband, there is a counter part to the morgengabe of our forefathers, which is still farther explained by the following circumstance.

The form of marriage among the Hindoos, termed ashore, is described to be 'when a man 'gives money to a father and mother, on his mar'rying their daughter, and also gives something 'to the daughter herself.'

Here there is not only the dos or dower, to be kept by the relations for the use of the bride, but the morgengabe, or morning-present, in the disposal of the bride herself; peculiarities which constituted the general characteristics of these transactions among the barbarians.

This coincidence is probably to be found in all nations, in certain ages or periods of their history. It is an evidence of the uniformity of the manners of man in the most distinct and distant regions; and it marks strongly the importance of women in the early times of society and civilization. Code of Gentoo Laws, ch. 2.

It would be irksome to prosecute this subject at greater length. Law and history uniformly concur to inform us, that anciently in Europe, the dos was the provision allotted to the wife, and

not the price paid for her. The customs of other nations offer their testimony to the same purpose. And natural affection and reason, the generosity of manners in rude times, and the limited ideas of property which then prevail, all join to support the conclusion. Yielding to the united force of these particulars, I scruple not to contradict positions which have the sanction of distinguished names.

[5] In the process of time, regular forms or acts were invented for the constitution of the dower. Four methods of the dower prevailed more particularly over Europe, and, on that account, it is proper to recite and to explain them. These were the dower ad ostium ecclesiae, the dower ex assense patris, the dower by the custom of particular places, and the dower de la plus belle. And from these peculiarities, also, there results the most clear and decisive proof, that the dos was not the purchase-money of the wife, but the provision for her maintenance.

- I. The dower ad oftium ecclefiae took place when the bridegroom, having come to the door of the church or monastery where he was to be married, and having plighted his faith to the woman, and received hers, made public mention of the quantity and proportion of the land he defigned for her dower. In consequence of this transaction, she might take possession, on his death, of the provision thus allotted to her.
- 2. The dower ex affensu patris took place when the son endowed his wife, with consent of his father.

ther, in the lands to which he was to succeed. In this case, the wise, on the demise of the husband, was to enjoy the portion assigned to her in the estate of the father.

3. By the *custom* of some counties, cities, and boroughs, the woman had, for her *dower*, the half of her husband's possessions, or the whole.

4. The dower de la plus belle had place when a person, for example, being seised of forty acres of land, of which he held twenty by knight-fervice, and twenty in foccage, took a wife, had a fon, and dying, left him under age. The lord of whom the land was held in knight-fervice, took possession of the twenty acres, as guardian of the minor in chivalry; and the mother entered into the enjoyment of the other twenty, as guardian in foccage. In this fituation, the mother might bring a writ of dower against the guardian in chivalry, to be endowed of the tenements holden in knight-But the guardian in chivalry, pleading in his defence, that she is guardian in foccage, might require from the court that she be adjudged to endow herfelf in the fairest of the tenements the possesses. And, if she could not show that the property in foccage was unequal to the purpose of the dower, the guardian in chivalry retained the lands holden of him during the minority of the heir. The woman, then affembling her neighbours, took possession, in their presence, of the fairest part of the foccage lands, to hold them during her life, under the title of the dower de la plus belle. Littleton, ch. 5. The Comments of

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Sir Edward Coke, and Monfr. Houard, and the Gloffaries.

It is thus, that the fimple regulation, mentioned by Tacitus, grew in time various and complicated. It even yet makes a figure in our laws. It is to be feen in the provisions they hold out for the widow. And, it may teach us to suspect, that enactments, which appear to be deeply founded in legislative wisdom, are often nothing more than improvements of the usages which natural reason and expediency have struck out in a barbarous age.

[6] The laws of the different nations of the barbarians vary in the dower or provision they ordained. The Longobardic laws made it the fourth part of the estate of the husband. LL. Longobard. lib. 2. tit. 4. l. 1. The Wisigothic constitution made it the tenth part of the substance of the husband. LL. Wisigoth. ap. Lindenbrog. p. 53. And, in England, the legal dower consisted of the third part of the lands or tenements of the husband. Coke on Littleton, p. 31.

"It is agreed concerning the states which Gaile-

"fuinda, when she came into France, received in dowry, and in morgengabe, that is, a morning present." Greg. Turon. lib. 9. c. 20. See farther LL. Burgund. tit. 42. l. c. 2. LL. Alaman. tit. 56. LL. Ripuar. tit. 37. l. 2. LL. Longobard. lib. 1. tit. 9. l. 12. &c.

A learned and ingenious writer has observed, that, in England, there are no traces of the morgengabe. Observations on the Statutes, p. 9. 3d edit. This I suspect is a mistake. The morgengabe is mentioned in the laws of Canute, and in those of Henry I. LL Canut. par. 2. c. 71. LL. Hen. I. c. 70. ap. Wilkins, p. 144. 267. The pinmoney of modern times, it is probable, grew out of this usage.

A peculiar kind of matrimonial engagement was called matrimonium ad morganaticam, which is to be diffinguished from the rite I now mention. This form of marriage did not permit of dower, and the wife had only a morgengabe or prefent. It was intended for the benefit of men of rank, who had loft their wives, but had children. In confequence of it, they could legally connect themselves with low women, who, receiving and being entitled to no dower, could not burden their estates. The issue of such connections had no power of fuccession, and inherited no dignity. But provisions might be made for them. It was out of this fource, chiefly, that the church of old was fupplied. Men of influence could there deposit, most securely, the spawn of their concubinage. And it still is, and ever will be, whereever it is wealthy, an afylum for this produce, and for the younger fons of noble families.

This scheme of legal concubinage is prevalent, at this hour, in Germany; and women, married after this odd fashion, are termed lest-handed wives; because it is a part of the ceremony for the bridegroom to give his lest hand to the bride. Of such connections, as in ancient times, the issue are bastards, as to inheritance, and bear neither the name nor the arms of the father. Baron von Lowben on Nobility.

Beside the morgengabe, or the present by the husband, it was common, at marriages, for the relations, and other persons connected with the parties, to express their fatisfaction by making gifts. 'Gaudent muneribus,' is a part of the characteristic description of the ancient Germans by Tacitus. 'Franci vero,' fays Gregory of Tours, when speaking of the marriage of the daughter of Chilperic, 'multa munera obtulerunt; alii aurum, 'alii argentum, nonnulli equos, plerique vesti-* menta, et unusquisque ut potuit, donativum de-' dit.' "The Franks brought many prefents; fome " gold, fome filver, others horses, many garments, " and every one as far as he was able made a pre-Hift. lib. 6. c. 45. " fent."

This cuftom pervaded all ranks of fociety. And the money or penny weddings which still prevail in small villages and hamlets are a remain of it. What, in one age, disgraces not the palace of the prince, is to be confined in another to the hovel of the rustic.

[8] The powers over a morgengabe, mentioned in the text, would not probably arise all at once, but gradually. The two former, I imagine, would be long known before the latter; and extensive powers over a morgengabe, consisting of money, would sooner be exerted, than over one consisting of land. Of a morgengabe in land, there is the following disposition or bequest by Gertude, a German lady of high rank, in the year 1273.

'Allodium fitum in Griezzenpach, ad se dona'tionis titulo pertinens, quod morgengab vulgari'ter nuncupatur, cultum et incultum, quaesitum
'et inquisitum, cum omnibus attinentiis ecclesiae
'S. Petri in monte liberaliter et absolute ordinat,
'testatur, tradit, et legat.' "She gave, ordained,
"bequeathed, and delivered freely and absolutely
"to the church of Saint Peter in the mountain,
"her allodial lands, in Griezzenpach, belonging to
"her, in the name of a gift which is commonly
"called morgengabe, cultivated and uncultivated,
"claimed and unclaimed, with all its pertinents."

Boekmer de Secund. Nupt. illustr. Pers. c. 2. §. 41.

ap. Heinnec. Elm. Jur. Germ. p. 121.

The clergy, by befieging the beds of the dying, procured many legacies of this kind; and their rapacity, though shocking and abominable, contributed to hasten the powers of the alienation

of property.

[9] 'Habeat ipsa mulier morgengab, et quod de parentibus ejus adduxerit, id est, Phaderfium.'
"The woman herself may have her morgengabe, and what she has brought from her parents, that

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that is, her paternal estate." LL. Longobard. lib. 2. tit. 1. l. 4. See also LL. Alaman. tit. 56. LL. Wisigoth. lib. 3. tit. 1. l. 5. LL. Longobard. lib. 1. tit. 9. l. 12.

In England, and in other countries, the term Phaderfium, which fignifies paternal estate, was unknown, but the term maritagium implied in them the prevalence of the custom. 'MARITAGI-' um dicitur id quod viro datur cum uxore; dotem enim appellamus Angli, non quod vir accipit, ' fed quod femina.' " MARITAGIUM is that which " is given to the husband with his wife; for " we Englishmen call that a dowry, not which " is received by the husband, but by the wife." Spelm. Gloff. p. 405. In the Formulare Anglicanum, there are preserved ancient feofments of land to the husbands of the daughters and fifters of the granters, in which maritagium is the term employed as expressive of the estate of the woman. See Appendix, No. 2.

The following law of the Longobards, on the fubject of the portion, or estate of the woman, feems to be very curious. 'Vidua quae in domo 'patris aut fratris regressa est, habeat sibi morgengab et methium: De fader sio autem, id est, 'de alio dono quantum pater aut frater dederit ei, 'quando ad maritum ambulaverit, mittat in confusum cum alliis sororibus.' "A widow returning to the family of her father or brother, may still retain, as her own, her morgengabe. But with respect to her fader sium, that is, the other present, being whatever her father or her bro-

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"ther gave to her, when she went to her husband, "that is disposed of in common to her and her other sisters." LL. Longob. lib. 2. tit. 14. l. 15.

This commixtion of the portions of the women, is treated by Littleton, in his tenures, lib. 3. ch. 2. But nothing of the history, or the philosophy of the custom, appears there. A woman who had been married, and had received her faderfium, might, on the death of her ancestor, if the portions of her fifters were to prove higher, make a commixtion of the tenements, and lay claim to an equal share. If they were to prove less, she might retain her fader fium. This commixtion was called Hotchpot, from a dish of that name. Littleton, p. 167. 'Hotchpot,' fays Cowel, ' is a word ' that cometh out of the lowe countries, where ' Hutspot fignifieth flesh cut into pretie pieces, and ' fodden with herbs and roots.' The Interpreter, edit. 1607. This dish is still in particular esteem in Scotland. Littleton, as cited above, makes botchpot, in its natural meaning, to fignify a pudding composed of different ingredients.

The estate brought by the woman to the husband, when a full inseudation, was called Maritagium liberum; when otherwise, it was maritagium servitio obnoxium. Glanvil. lib. 7. Regiam Majestatem, lib 2. Bracton, lib. 2. Fleta, lib. 3. Littleton, lib. 1.

[10] The dos, or dower, which had figured fo much, was thus to be gradually swallowed up in the jointure; and, in this situation, it came to express the estate brought to the husband by the

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wife. This circumstance is well illustrated by the following example in Muratori, an. 1203.

'Azo, Estensis Marchio, in publico conventu 'barenum Lombardiae, warrantavit et professius ' fuit, se accepisse in dotem a domina Aliz, filia ' quondam Rainaldi principis Antiocheni, quam 'in matrimonio fibi receperit, duo millia marcharum argenti, ac inde jure pignoris et donationis ' propter nuptias, investivisse dominam Aliz de tantis de fuis bonis et possessionibus et immobilibus, ubicumque habeat, vel adquirere debeat, ut valeant duplum suprascriptae dotis et donationis. " Azo, Marquifs of Efte, in a public affembly of " the barons of Lombardy, acknowledged and at-" tested, that he had accepted, as a dowry from " Lady Aliz, the daughter of Rainald late Prince " of Antioch, whom he had received in marriage, " two thousand merks of filver, and on that ac-"count, as a token and pledge of the nuptials, " that he had invested Lady Aliz in as much of " his immoveable property and possessions, where-" ever he then had, or might thereafter acquire "them, as should extend to double the amount " of the before-written dowry and donation." Antiq. Estens. tom. 1. p. 381. ap. Heinnec. Elem. Jur. Germ. p. 120.

I pretend not to fix the precise time when dos assumed this sense. The meaning of words, varying perpetually with the sluctuation of manners and the intermixture of nations, gives an almost impenetrable darkness to the middle ages. The pale inquirer is often to forsake an interpretation

he had chosen, and on which he had built. Language is to deceive him. He is to attend to customs and usages; yet customs and usages prevail for a time, are lost, and start up again. He is involved, and wanders in the double gloom of antiquity and barbarism.

[11] ' Dulcissima filia mea illa, ego ille. Diu-' turna fed impia inter nos confuetudo tenetur, ut 6 de terra paterna forores cum fratribus portionem 'non habeant. Sed ego perpendens hanc impie-' tatem, ficut mihi a Deo aequaliter donati estis 'filii, ita et a me fitis aequaliter diligendi, ut 'de rebus meis post meum discessum aequaliter 'gaudeatis.' "My daughter is most dear to me, " and I to her. An ancient and impious practice " hath prevailed among us, that the fifters have " not a share of the paternal territory along with " their brother. But I have reflected on this im-" piety. You, my children, have been alike gi-" ven to me by God. You equally deferve my love; " and after my death you shall be alike happy in " the possession of my estate." Charta ap. Marculp. Form. lib. 2. c. 12.

'Inter Burgundiones id volumus custodiri, ut,
'si quis filium non reliqueret, in loco filii filia in
'patris matrisque hereditate succedat.' "We de"fire this rule to be observed among the Burgun"dians, that if any one hath not left a son, the
"daughter shall succeed to the inheritance of the
"father and mother." LL. Burgund. tit. 14. l. 1.
'Si quis Longobardus sine filiis legitimis masculinis mortuus fuerit, et siliam dereliquerit unum

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'aut plures legitimas, ipsae ei in omnem heredi'tatem patris vel matris suae, tanquam filii legi'timi masculini, heredes succedant.' "If any
"Lombard shall die without a legitimate male
"child, and hath left one or more legitimate
"daughters, they, in place of legitimate male
"heirs, shall succeed to the whole inheritance of
"the father and mother." LL. Longob. lib. 2. tit.
14. l. 19. See farther, LL. Saxon. tit. 7. LL.
Angl. et Werin. tit. 6. La Coutume Reformée du
Pais et Duché de Normandie, commentée par Basnage, tome 1. p. 388. Selecta Feudalia Thomasiana,
p. 26—29.

[12] There are frequent examples of ladies exercifing the civil rights and the jurisdictions of fiefs. Of courts held by them, and of decrees they pronounced, there are curious evidences in Muratori, Antiq. Ital. Medii Ævi, vol. 1. p. 489-614. 738. 970. 971.

In a learned work, entitled, le Droit public de France eclarici par les monumens de l'antiquité, we meet the following notices, which are authenticated from records.

- ' Mathilde Comtesse d'Artois eut seance et voix
- ' deliberative comme les autres Paris de France,
- ' dans le procés criminel fait à Robert Comte de
- ' Flanders.
- ' Jeanne fille de Raymond Comte de Toulouse ' preta le serment, et fit la foi et hommage au Roi ' de cette pairie.
- ' Jean fille de Bauldouin fit serment de fidelité

 ' pour la pairie de Flandres. Marguerite sa soeur

 ' en

'en herita et assista comme pair au celebre juge-'ment des pairs de France, donné pour le Comté 'de Clermont en Beavoiss.'

"Matilda Countess of Artois, had a seat, and a "voice as the other peers of France, in the cri"minal process against Robert Count of Flanders."

"Jean, daughter of Raymond Count of Tou"loufe, took an oath, and did homage to the
"king for that peerage.

"Jean, daughter of Bauldouin, took an oath of fidelity to the peerage of Flanders. Margaret, her fifter and heir, affifted as a peer at the famous judgment of the peers of France, on the county of Clermont in Beauvoisis." Bouquet, p. 338. See farther Bruffel, usage general de siefs, liv. 2. ch. 14.

In England, in the reign of Edward III. there were fummoned to parliament by writ ad colloquium et tractatum by their proxies, Mary Countess of Norfolk, Alienor Countess of Ormond, Anna Defpenser, Philippa Countess of March, Johanna Fitzwater, Agneta Countess of Pembroke, and Catharine Countess of Athol. Gurdon's Hist. of the High Court of Parliament, vol. 1. p. 202. Parliam. Summons, 265.

[13] The ornaments of the mother went early by fuccession to the daughters; and, from the laws which prove this peculiarity, it is also to be inferred, that the passion of the women for dress was keen and strong.

'Ornamenta et vestimenta matronalia ad fili-'as, absque ullo fratris fratrumque consortio, per-'tinebunt.' * tinebunt.' "The dress and ornaments of the "mother shall belong to the daughters, without "any participation to the brother or brothers." LL. Burgund. tit. 51. l. 3.

'Mater moriens filio terram, mancipia, pecu'niam dimittat; filiae vero spolia colli, id est, mu'renas, nuscas, monilia, inaures, vestes, armillas,
'vel quidquid ornamenti proprii videbatur habu'isse.' "The mother, when dying, shall leave
"to her son, the lands, money, and slaves; to
"the daughter, the necklaces, ear-rings, clothes,
"bracelets, and whatever articles of ornament
"she may have possessed." LL. Angel. et Werin.
tit. 6. l. 6.

[14] 'Si quis propter libidinem liberae manum 'injecerit, aut virgini seu uxori alterius, quod 'Bajuvarii horgrift vocant, cum vi. solid. compo'nat.' "If any one, from the provocation of lust,
"hath laid his hand on a free woman, either a
"virgin, or another man's wife, which the Bava"rians call borgrist, he shall compound for six
"shillings." LL. Bai vvar. tit. . l. 3.

'Si indumenta fuper genucula elevaverit quod humilzorum vocant, cum xii. folid. componat.'
"If any one throws her under petticoat above her knees, he shall be fined in twelve shillings."

Ibid. 1. 4.

'Si autem discriminalia ejecerit de capite, Wult-'worf dicunt, vel virgini libidinosé crines de ca-'pite extraxerit, cum xii. fol. componat.' "If "any one has thrown the bodkin, which they "call Wultworf, off her head, or has luftfully drawn "the "the hair from her head, he shall compound for "twelve shillings." Ibid. 1. 5.

'Si qua libera faemina virgo vadit in itinere ' fuo inter duas villas, et obviavit eam aliquis, et per raptum denudat caput ejus, cum vi. fol. com-' ponat. Et si ejus vestimenta levaverit, ut us-' que ad genicula denudet, cum vi. fol. componat: 'Et fi eam denudaverit ut genitalia ejus appare-'ant, vel posteriora, cum xii. fol. componat.' "If " any free woman, a virgin, goes between two " villages, and hath met any one, and he by " force, uncovers her head, he shall compound for " fix shillings. And if he has loofed her clothes, " fo that she is uncovered up to the knee, he shall " compound for fix shillings: And if he hath un-" covered her farther, fo that you may fee ****, " or ***, he shall compound for twelve shillings." LL. Alaman. tit. 58. l. 1.

'Si quis liberam foeminam per verenda ejus 'comprehenderit iiii. folid. componat, et duos fo'lidos pro freda.' "If any one shall seize a free "woman by that which is to be respected, he shall "compound for four shillings, and two shillings to "the king for breach of the peace." LL. Frision. tit. 22. l. 89. See farther LL. Sal. tit. 22. LL. Longobard. lib. 2. tit. 55. l. 16.

One may smile at the simplicity of these regulations. They are proofs, notwithstanding, of the respect entertained for chastity. They express, immodestly, the delicacies of a rude, but refining people. They offend virtue, in the very act of promoting it.

Similar

Similar inflitutions or regulations, may be feen in the code of Gentoo laws; but, as they are expressed with a still greater freedom of language, I avoid to give any examples of them. Ch. 19.

SECT. III.

[1] PRINCIPES regionum atque pagorum inter fuos jus dicunt, controversiasque minuunt." The chiefs of the provinces and cantons, distribute justice, and decide controversies." Casar, de Bell. Gal. lib. 6. c. 22. See also Tacit. de Mor. Germ. c. 12.

These principes became lords or barons, after the conquests of the barbarians, and, in this last state, continued and improved the privileges they had previously possessed. Dissert. concerning the Antiquity of the English Constitution, Part 3. In Germany, there was probably no appeal from their decisions. For in the German communities, it is said, there was no common magistrate. Nullus communis est magistratus. Casar, ibid. The judging, without appeal, was exercised in all the Gothic kingdoms by the higher division of the nobility. They had the bigh and the low justice, the justice haut et bas, alté et bassé.

It would lead to details improper in this place, if I should attempt to explain the origin and growth of the different privileges of the nobles. But I may hint my surprise, that these topics, so full of curiosity, have so little attracted our antiquaries and lawyers. The jurisdiction and powers exercised

cifed by the great, form a remarkable step in the progress of the European governments. Loyseau indeed, and many French writers, make an easy discussion of this matter, by affecting to treat them as encroachments on monarchy, or on the rights of kings. And Dr. Robertson has given his fanction to this opinion. Hist. of Charles V. vol. 1. p. 60.

A perfection, however, of government, or of regal jurisdiction, is thus supposed, in the moment of its rise; a circumstance, contradictory alike to natural reason and to story. Government is not perfect all at once: It attains not maturity but by slow degrees. The privileges of the nobles were prior to its perfect state. In fact, it was by the abolition of these that it grew to strength and ripeness. The monarchies of Europe were completed, when the high privileges of the nobility were destroyed. But these privileges were exercised before government was understood, and before kings had ascertained their prerogatives.

[2] An old writer, speaking of the greater barons or lords, has these words. 'In omnibus tene'mentis suis omnem ab antiquo legalem habuere
'justitiam, videlicet, ferrum, fossam, surcas, et si'milia.' "From antiquity, in the places of their
"residence, they always exercise criminal jurisdic"tion such as imprisonment, * the sword, the gal"lows, and so on." Gervasius. Dorobern. an. 1195.
ap. Du Gange, voc. Fossa.

'Proditores et transfugas,' fays Tacitus of the

^{*} Fossa, undoubtedly, here signifies that subterraneous dungeon to be seen in the castles of this description.

old Germans, 'arboribus fuspendunt. Ignavos et imbelles, et corpore infames coeno ac palude, injecta
infuper crate, mergunt.' "Traitors and deserters
"they hang upon trees, cowards and effeminate per"fons, and those guilty of unnatural practices are
"suffocated in mud under a hurdle." De Mor.
Germ. c. 12. This description has, doubtless, a
reference to the German nobles or chiefs who
presided in the courts of the cantons and districts
into which a tribe or community was divided.
And, does it not call to one's mind the pit and
gallows, or the right to determine de alto et basso
of the feudal nobility?

The power of mercy, or the pardoning of a criminal after fentence has been pronounced against him, is a curious circumftance in criminal jurifdiction. I should think, that it was exerted by the lord or baron in his dominions before it could be exercifed in a general manner by the fovereign. The connection between the lord and the vaffal was intimate; and the felony of the latter being chiefly an injury to the former, it might naturally enough be imagined, that he was entitled not only to forgive the offence, but to suspend the punishment. To his proper vallals, the fovereign might also act in the same way. It was thus, in fact, in the Anglo-Saxon period of our history. the king had then only the power of pardoning crimes as to himself. But, on what principle did the fovereign begin to exert the general prerogative of pardoning criminals, every where through the state, after condemnation? The question is important,

important, and might be argued with great show, and much ingenuity. But the narrow boundaries within which I must confine my remarks, admit not of either. I can only hint at my idea, and must not wait to insist upon it.

When the territorial jurisdictions of the nobles were to decay, they loft the privilege of giving pardons, as well as the other advantages annexed to their fiefs. The judges who fucceeded them, were not to possess their prerogatives. Other, and more cultivated maxims of law and equity, had grown familiar. Unconnected with the diftributions and the offices of justice, but as peers, the nobles were to cease to interfere with law and bufiness in their estates or territories. In this condition, their prerogatives could pass no where but to the crown. That of mercy was to be swallowed up with the rest. When regular courts were erected, and when the barons neither levied troops, coined money, nor pardoned crimes, all these privileges were to be exercised, exclusively, by the fovereign. All the members of the community were then under one head. The kingdom feemed as it were to be one great fief, and the people looked up to the fovereign as the only fuperior.

The act of parliament which had the effect to abridge, for ever, the high prerogatives of the nobles, declares, 'That no person or persons, of what estate or degree soever they be, from the first day of July, which shall be in the year of our Lord God 1536, shall have any power or authority to pardon or remit any treasons, mur-

' thers, manslaughters, or any kind of felonies,

' whatfoever they be; nor any accessaries to any

' treasons, murthers, manslaughters, or felonies;

or any outlawries, for any fuch offences commit-

' ted, perpetrated, done, or divulged, or hereaf-

ter to be committed, done or divulged, by, or a-

gainst any person or persons, in any part of this realm. Wales, or to the marches of the same;

but that the King's Highness, his heirs and suc-

ceffors, Kings of this realm, shall have the whole

' power and authority thereof, united and knit to

' the imperial crown of this realm.' Stat. 27. Henry VIII. c. 24.

[3] Du Cange, Dissert. 29. sur l'Histoire de St. Louis. Brussel, usage general des siefs, liv. 2.

[4] 'Suscipere tam inimicitias seu patris seu 'propinqui, quam amicitias, necesse est.' "It is "equally necessary to adopt the attachments and "animosities of a father or a relation." Tacit. de Mor. Germ. c. 21.

Hence the deadly feuds of our ancestors. Such is the state of manners in all rude ages. The American carries his friendships and his resentments to extremity, and delivers them as an inheritance to his sons. He is the best friend, and the bitterest enemy. When he is disposed to be hossile, he knows how to conceal his sentiments:

' He can even affect to be reconciled till he catches

' the opportunity of revenge. No distance of place,

and no length of time can allay his refertment,

' or protect the object of it.' Europ. Settlem. in Amer. vol. 1. p. 165.

It was in consequence of the principle or right of revenge, that the Greeks made it a maxim of their creed, that the gods punish the crimes of the wicked upon their innocent posterity. It was a consequence of it, that, even in modern times, those inclement and ungenerous laws were enacted, which taint the blood of a rebel, which dare to violate the facred rights of humanity, and to punish a blameless progeny with penalties and forfeitures.

[5] 'In Gallia, non folum in omnibus civitati'bus, atque pagis partibusque, sed pene etiam in
'fingulis domibus, factiones sunt; earumque fac'tionum sunt principes, qui summam auctorita'tem eorum judicio habere existimantur; quo'rum ad arbitrium judiciumque summa omnium
'rerum consiliorumque redeat.' "In Gaul, not
"only in every state, canton, and territory, but
"even almost in every house, there are factions,
"and of these factions there are chiefs, who are
"considered as enjoying by their influence the
"fupreme authority. The conclusion of every
"transaction and part of business is decided by
"their judgment and resolution." Casar, de Bell.
Gall. lib. 6. c. 10.

After the Germanic conquests, the words faida, feid, feeth, and feud, came to express the hostilities of the combination of kindred, who revenged the death of any person of their blood, against the killer and his race. In the Anglo-Saxon period of our history, these factions and hostilities were prevalent to an uncommon degree. And, what

is worthy of observation, when a person was outlawed, and could form no combination of this sort for his protection, but might be put to death by any individual who met him, the term frendlesman, expressed his condition. 'Talem,' says Bracton, 'vocant Anglici Utlaughe, et alio nomine an-'tiquitus solet nominari, scilicet Frendles-man.' "The English call such a man an Utlaughe, and "of old they were in use to call him by another "name, to wit, Frendles-man." Lib .3. p. 129.

About the year 944, King Edmund, with a view of repressing the violence and pernicious tendency of such confederacies, enacted the follow-

ing method for their regulation.

' Memet, et nos omnes taedet impiarum et ' quotidianarum pugnarum quae inter nos ipsos · fiunt, et propterea in hunc modum statuimus. Si · quis alium posthac interfecerit, solus cum inter-' fecti cognatis faidam gerito, cujuscunque condi-' tionis fuerit, ni ope amicorum integram weram ' intra duodecim menses persolverit. Sin destitu-' erint eum cognati et noluerint : Volumus ut illi 'omnes [praeter reum] à faida fint liberi, dum ' tamen, nec victum ei prebeant, nec refugium. ' Quod fi quis hoc fecerit suis omnibus apud re-' gem mulctator, et cum eo quem destituit nuper, ' faidam jam sustineat propinquorum intersecti. ' Qui vero ab alio cognatorum quam a reo fump-' ferit vindictam, fit in faida ipfius regis et amico-'rum suorum omnium, omnibusque bonis suis ' plectitor'. " I, and all of us, are ashamed of the "daily and impious battles which fall out among

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" us, on which account, we have refolved as fol-" lows :- If any one hereafter shall have flain an-" other, he alone shall carry on a feud with the " relations of the deceased, unless by the affistance " of his friends, he has, within twelve months, dif-" charged the stated price of a murther. " relations have renounced and difowned him, we " will that they all, except the person accused, " shall be freed of the feud, providing that they " neither supply him with food nor shelter. " if any one shall do this, let him forfeit his whole " property to the king, and with his kinfman " whom he had renounced, let him fustain the " feud of the relations of the deceased. But who-" ever of these relations takes revenge upon any "other person than he who is accused, shall be " in the feud of the king himfelf, and of all the "king's friends, and shall forfeit all his property." L.L. Edmund. ap. Spelm. Gloff. p. 209.

The method of compounding, or of buying away the refentment of the injured kindred, is thus described by the same prince.

'Prudentium est faidas compescere. Primo [de more gentium] oratorem mittet intersector ad cognatos intersecti, nunciaturum se velle eisdem fatisfacere. Deinde tradatur intersector in manus oratoris, ut coram veniat pacate, et de solvenda wera ipsemet spondeat. Sponsam solvi fatisdato. Hoc sacto, indictetur mundium regis, ab illo die usque in viginti unam noctes, et collistrigii mulctam dependito; post alias viginti unam noctes manbotam, et nocte vigesima prima sequenti

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' fequenti primam were folutionem numerato. " It is prudent to extinguish feuds. First, accord-" ing to the custom of nations, let the murtherer " fend a speaker to the friends of the deceased to " inform them that he is willing to give them fa-" tisfaction. Then, let the murderer be delivered in-" to the hands of the speaker that he may come in " fafetybefore them, and may, in person, promise to " pay the price of a man's life. Let him give fecu-" rity that the penalty shall be discharged. This " being done, let the King's peace be proclaimed " for twenty-one nights, from and after that day, " and let him undergo the punishment of the pil-"lory; and after twenty-one nights more, let " him pay the price of the murther, and the first " payment of this price on the twenty first night." LL. Edmund.ap. Spelm. Gloff. p. 210. et Wilkins, p. 74. 75.

Transactions of the same nature, characterise the criminal jurisprudence of all infant nations. 'Criminal matters,' says a most acute and elegant writer, 'are generally compromised among 'the Americans in the following manner. The 'offender absents himself; his friends send a compliment of condolence to those of the party murdered. Presents are offered, which are rarely 'refused. The head of the family appears, who, 'in a formal speech, delivers the presents, which 'consist often of above sixty articles, every one of

'which is given to cancel some part of the offence and to assuage the grief of the suffering party.

With the first he says, By this I remove the hatchet

from the wound, and make it to fall out of the hands of him who is prepared to revenge the injury; with the fecond. I dry up the blood of that wound; and fo on, in apt figures, taking away, one by one, all the ill confequences of the murder.' Europ.

Settlem. in America, vol. 1. p. 174.

The hostilities and factions of which I speak, were supported among the Anglo-Saxons, as among the Gauls and the Germans, by the authority and countenance of the chiefs and the nobles. In the Norman times, the barons gave letters or mandates of protection to individuals, whom they were disposed to serve. Even kings gave obligations to abbeys and monasteries, by which they were bound to protect them against violence of every kind. On the confideration of fines, they were even to remit their own animolities, and to protect criminals from justice. See Appendix, No 3. The fame things had place in the other kingdoms of Europe. Men, weak, and without strength, bought the affiftance and protection of the ftrong and powerful. Du Cange, voc. Salvamentum, Ca-Form. Solen. ap. Baluz. pitalicium.

[6] After the beautiful discovery of a magistrate, the violence of the injured is corrected; and it is then, probably, that fines and compensations for offences are invented, or at least established. 'Nec implacabiles durant,' says Tacitus, of the resentments of the Germans, 'luitur enim etiam 'homicidium certo armentorum ac pecorum nume'ro, recipitque satisfactionem universa domus.'
"Their resentments are not implacable, since a Kk "murther

"murther is pardoned for a certain number of horned cattle or sheep; and the whole family acknowledge themselves to be pacified." De Mor. Germ. c. 31.

These fines or compositions, of which it was the object to fatisfy the revenge of the relations of the person who had suffered, were originally settled by their agreement with the offender, or, by the difcretion of the magistrate. Afterwards they were fixed by ordinances. The Anglo-Saxon laws, as well as those of the other barbarians, recount not only the stated fines for particular offences, but for particular persons, from the prince to the peasant. When the delinquent could not pay the fine, which was to buy away, or to gratify the refentment of the injured family, the law, before it was improved, delivered him over to their refentment, and the wild state of nature revived again. Compositions of this kind were known, anciently, in Europe, under a variety of names. See in the Gloffaries, Wera, Faida, Compositio, Wergeldum, &c.

The exaction of fines to the injured, among the ancient Germans, I confider as a proof that, in criminal matters, they had proceeded to appeal to a judge. I therefore differ from Dr. Robertson, when he observes, that, 'among the ancient Germans, as well as other nations in a similar state of fociety, the right of avenging injuries was a private and personal right, exercised by force of arms, without any reference to any umpire, or any appeal to a magistrate for decision.' History Charles V. vol. 1. p. 274.

In fact, it was not even folely the fine to individuals that was known among the Germans. They had advanced much farther in criminal, jurifprudence. It was thought that the criminal, befide offending a particular family by the injury done to any of its number, had also offended the society, by breaking its peace. A fine, likewise, was, on this account, exacted from him, and went to the public or fisc. And thus Mr. Hume, too, is mistaken, when he will not allow that the Germans had made this step towards a more cultivated life. Hist. of England, vol. 1. p. 154.

These different fines, the composition to the individuals, and that to the public, are pointedly and beautifully diftinguished in the following paffage of Tacitus. Having mentioned the methods in which the German nations punished the greater crimes, he adds, ' Levioribus delictis, pro modo ' poenarum, equorum pecorumque numero convicti mulctantur. Pars mulctae Regi vel Civi-· tati: Pars ipsi qui vindicatur vel propinquis ejus, exfolvitur.' " For leffer faults, by way of punish-"ment, a number of horses or other cattle are " paid by the offending party. A portion of this " penalty is given to the king; or the state, and "the rest is paid, either to the person who is to " be avenged, or to his relations." De Mor. Germ. c. 12. It is impossible for an authority to be more express or satisfactory against these eminent writers.

After the conquests of the Germans, the fine for disturbing the public peace was exacted under the name of fredum; and it is observable, that a

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portion of the profits of it came to conftitute the first salary of judges.

The biographer of Charles V. I am fenfible. professing to be guided by Baron Montesquieu. denies that ' the fredum was a compensation due to ' the community, on account of the public peace;' and confiders it as ' the price paid to the magiftrate for the protection he afforded against the * violence of refentment.' Vol. 1. p. 300. This notion fems not to agree with his former opinion, as he conceives that the fredum was paid in the age of Tacitus*. And I observe he has also affirmed. that the fine to the injured family may, in like manner, be traced back to the ancient Germanst. which appears to be another inconfiftency with his former declaration. But waving any confideration of these inadvertencies, I think there is nothing more evident, than that the fredum was originally paid to the fife, or to the fovereign, for the breach of the peace. The following arguments are stubborn, and perhaps conclusive.

· Fredum

^{* &#}x27;A certain sum, called a fredum, was paid to the king or state, as Tacitus expresses it, or the Fiscus, in the language of the barbarous laws.' Vol. 1. p. 300.

^{+ &#}x27;The payment of a fine, by way of satisfaction to the 'person or samily injured, was the first device of a rude peo'ple, in order to check the career of private resentment, and 'to extinguish those faidae or deadly seuds, which were pro'secuted among them, with the utmost violence. This cus'tom may be traced back to the ancient Germans. Vol. 1.

5. 299.

" is the royal composition for breach of the peace." Gloss. Vet. ap. Lindenbrog. p. 1404.

' Hoc quoque jubemus, ut judices fupra nomi-' nati, five fiscales, de quacunque libet causa freda 'non exigant, priusquam facinus componatur. 'Si quis autem per cupiditatem ista transgressus ' fuerit, legibus componatur. Fredum autem non 'illi judici tribuat, cui culpam commist, sed illi ' qui solutionem recipit, tertiam partem Fisco tri-' buat, ut Pax perpetua stabilis permaneat.' "We " farther ordain that the judges above named or "the Fiscal, shall exact the fredum in no case " whatever till the penalty has been fettled for " the crime itself. If any one, however, has from " avarice broke this regulation, let it be fettled " by the laws. Yet the offender shall not pay the " fredum to the judge, to whom he owned his fault *. "but to him who has received fatisfaction for the " crime, and let him give a third part to the Fisc, "that there may be perpetual peace." LL. Ripuar. tit. 89.

'Si quis liber liberum infra januas ecclefiae oc-'ciderit, cognoscat se contra Deum injuste secisse, 'et

* The former fentence feems to suppose the case that the judge had already received the fredum, and consequently this clause appears to have the air of a contradiction. Among barbarians such inaccurracy is not surprising. But at this day, a British act of parliament is often unintelligible even to the very wiseacres who have drawn it up. Of late years, in particular, our records have been crowded with statutes of explanation. T.

et ecclesiam Dei polluisse: Ad ipsam ecclesiam 'quam polluit lx. fol. componat. Ad Fiscum vero fimiliter alios lx. fol. pro FREDO folyat: · Parentibus autem legitimum weregildum folvat.' " If any free man hath flain another with-" in the gates of the church, he ought to know

"that he acted unjustly to God, and has defiled

" his church. With the church which he has

" defiled, let him compound for fixty shillings. In " like manner let him pay fixty shillings to the

" fiscal, for breach of the king's peace. To the

" parents let him pay the fine stipulated by law." LL. Alaman. tit. 4.

' Si nobilis furtum quodlibet dicitur perpetrasse, et negare voluerit, cum quinque facramentalibus. ' juret: Aut si negare non potuerit, quod abstulit in duplum restituat, et ad partem Regis lxxx. ' fol. pro. Fredo componat, hoc est Weregildum ' fuum.' " If any nobleman is faid to have com-

" mitted a theft, and chuses to deny it, let him

" fwear by the five facraments. Or if he cannot

" deny, let him restore the double value of what

" he stole, and compound for eighty shillings to

" the king for breach of the peace, and this shall " be the ranfom of his life." LL. Frisionum, tit.

3. l. 1. See farther LL. Longobard. tit. 30. l. 13. Capit. Kar. et Lud. lib. 3. tit. 30.

Among the Anglo-Saxons, the fine for the violated peace was termed Griethbrech. Spelm. Gloff. It was, as times became mercenary, that a part of the fredum, and fometimes the whole of it, went to the judge. And the falary thus affigned to

him,

him, was not for the protection he afforded, for he was the servant of the public; but as the reward of his growing trouble, and the emolument of his office. See LL. Sal. tit. 52. l. 3. tit. 55. l. 2. LL. Baivvar. tit. 2. l. 16.

The giving a stipend to judges out of the fines for the violated peace, was common in England, as well as in the other states of Europe. This stipend or allowance was usually the third penny of the county. An old book of Battel-Abbey, cited by Mr. Selden, has these words. 'Confu-' etudinaliter per totam Angliam mos antiquitus ' pro lege inoleverat, comites provinciarum TER-'TIUM DENARIUM fibi obtinere.' " It is an ancient. " cuftom over all England, and by practice has "become a law, that the earls of the counties " receive the third penny." Tit. Hon. part 2. ch. 5. fect. 7. Gervase of Tilbury, or whoever wrote the old dialogue concerning the exchequer, fpeaks thus. ' Comes est qui TERTIAM PORTIONEM CORUM ' quae de placitis proveniunt in quolibet comitatu 'percipit.' "The earl receives the third part " of the fums which arise in each county from the "decifions." And the earl, he fays, was called Comes, ' quia Fisco socius est, et comes in perci-'piendis.' "Because he was an affociate with "the Fisc and his partner in perquisites." Dial. de Scaccar, lib. 1. c. 17. This tract is published by Mr. Madox in his history of the exchequer. ' De istis octo libris,' fay the laws of the Confessor, '[scil. mulcta violatae pacis] Rex habebat cen-' tum folidos, et Conful comitatus quinquaginta,

qui TERTIUM habebat DENARIUM de forisfacturis: ' Decanus autem reliquos decem.' " Of these eight " pounds, viz. the fines for breach of the peace, " the king had an hundred shillings, the judge " of the county fifty, who had the third penny of " forfeitures; the dean the other ten." LL. Confeff. c. 31. ap. Spelm. Gloff. p. 142. What shows likewise, beyond a doubt, that the third penny of the county arose out of the fines for the violated peace, is the circumftance, that the kings of England made formal grants of it to subjects whom they favoured. This, the book already quoted concerning the exchequer, lays down in these words, 'Hii (it had been speaking of earls, ' and of the profits of fines,) tantum ifta percipi-' unt, quibus regum munificentia obsequii prae-'ftiti, vel eximiae probitatis intuitu comites fibi ' creat, et ratione dignitatis illius haec conferenda ' decernit, quibusdam baereditarie quibusdam per-' fonaliter.' "These profits are received by those " whom the generofity of the king, on account of " their approved fidelity, and diffinguished pro-" bity towards him has made earls, and because of " their dignity, he ordains these to be conferred " on them, to some perfonally, and to others he-" ritably." Dial. de Scaccar. ap. Madox, p. 402. The higher earls, or the earls palatine, it is obfervable, had all the profits to their own use. Of the earls who possessed the third penny, there is mentioned the Earl of Kent, who had it under William I. And there is evidence, that it was anciently enjoyed by the Earls of Arundel, Oxford.

ford, Essex, Norfolk, and Devonshire. Selden, Tit. Hon. part 2. ch. 5. Madox, Baron. Ang. b. 2. ch. 1.

(7) When the right of private war was acknowledged as a legal prerogative of nobility, regulations were made to adjust its nature and exertion. Beaumanoir, Coutumes des Beauvoisis, ch. 59. Du Cange, differt. 29. fur l'histoire de St. Louis. Boulainvilliers on the ancient parliaments of France, letter. 5. What is furprifing, even the neglect of exercifing this right, when a proper occasion required its exertion, was an offence to the order who professed it, and an object of punishment. 'La Duc Sandragèfile,' fays Saint Foix, 'ayant ' été tuè par quelqu'un de ses ennemis, les Grands ' du Royaume citerent ses enfans qui negligeoi-' ent de venger sa mort, et les priverent de sa suc-'ceffion.' "The Duke of Sandragefile having been " flain by fome of his enemies, the grandees of "the kingdom cited his children who neglected " to revenge his death, and deprived them of his "fuccession." Esfais histor. tom. 2. p. 88. France, this prerogative of the nobles was not entirely abolished in the middle of the fourteenth century. Bruffel, usage-general des Fiefs, liv. 2. ch. 2.

Dr. Robertson seems to imagine, that, in England after the Norman invasion, the nobility lost, or did not exercise the right of private war; and he reasons with a view to account for these particulars. Hist. of Charles V. vol. 1.* It is to be ac-

L1 knowledged,

^{* &#}x27;After the conquest, the mention of private wars among the nobility, occurs more rarely in the English history, than

knowledged, that the historians of England have not been sufficiently attentive to record the private wars of the nobles. But this elegant writer ought, doubtless, to have remembered, that, in the higher order of its nobility, the right of private war

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in that of any other European nation, and no laws concerning them are to be found in the body of their statutes. Such a change in their own manners, and fuch a variation from those of their neighbours, is remarkable. Is it to be a. " scribed to the extraordinary power which William the Nor-' man acquired by right of conquest, and transmitted to his ' fucceffors, which rendered the execution of justice more vigorous and decifive, and the jurisdiction of the King's court more extensive, than under the monarchs on the continent? Or, was it owing to the fettlement of the Normans in Enge land, who, having never adopted the practice of private war in their country, abolished it in the kingdom which they 'conquered? It is afferted, in an ordinance of John King of France, that in all times past, persons of every rank in Normandy have been prohibited to wage war, and the prac-' tice has been deemed unlawful. Ordon. tom. 2. p. 407. If ' this fact were certain, it would go far towards explaining the peculiarity which I have mentioned. But, as there are ' fome English acts of parliament, which, according to the re-' mark of the learned author of the Observations on the Statutes, " chiefly the more Ancient, recite falsehoods, it may be added, ' that this is not peculiar to the laws of that country. Not-' withstanding the positive affertion in this public law of France, there is good reason for considering it as a statute ' which recites a falsehood.' Charles V. vol. 1. p. 286. 287.

The first question that is put by this historian, is founded on a mistake; for William the Norman atchieved no conquest over England. The second question is founded on a supposed fact, which he appears to regard as of no moment; and indeed it does not deserve to be considered in any other light.

was as much inherent as the coinage of money, the holding of courts, or any other of their prerogatives; and that these received not their last and effectual blow till the age and reign of Henry VIII.

In the Appendix, I produce a very curious proof of the exercise of private war in England. It is a truce between two nobles, agreeing to stop hostilities. Appendix, No. 4. The following passage of Glanville, is also a striking testimony of the existence of the right of private war. 'Utrum 'vero ad guerram suam maintenendam possint domini hujusmodi auxilia exigere quaero.' "I ask "whether lords can demand affistance of this "kind, to carry on their own private wars." Lib. 9. c. 8. And the dispute between Richard Earl Marshall, and Henry III. of which there is a fingular relation in Matthew Paris, is certainly to be accounted for on the principle of this prerogative.

Nor is there wanting other evidence of its existence. It was in a great measure, from the exercise of the right of private war, that in England, in the age of Stephen, there were above eleven hundred forts and castles. Lord Lyttleton's History of Henry II. vol. 1. p. 418. The feudum jurabile et reddibile was likewise a consequence of it, by which a sovereign or a noble put a vassal into any of his castles, in order to defend it, and to guard his stores and his prisoners, and whom he bound by an oath, to restore it in a certain time, or to his call or mandate. This form of sief and tenure was not only known in England, but frequent Llij there;

there; and mention is made of it in the laws of Henry I. The right of private war was, therefore, often exercised in this country; and what deserves observation, without paying an attention to this right, it is impossible to explain those ordinances of Henry which allude to this feudal peculiarity. Spelman, not attending to it, could not reach their meaning, and pronounces of them, that they are obscure and corrupted. Gloss. voc. Castellacium. Their sense, notwithstanding, when tried by this standard, is easy and natural.

[8] The prerogatives of the higher nobility throughout Europe, may be referred to the following heads; the power of making war of their private authority, the right of life and death in their territories, the levying of imposts, the raifing of troops, the coining of money, and the making of laws. It is to be wished, that some inquisitive and judicious antiquary would collect from the English laws and records, all the circumstances to be found which have a relation to these topics. He could not offer a more valuable present to the public.

These powers were exercised by the higher nobles among the Anglo-Saxons. For, though palatinates, which are generally allowed to have possessed them, were not familiar by name in those times; yet, I cannot but agree with Mr. Selden, that the sense and substance of them were then fully known. The Anglo-Saxon earls, who had their earldoms to their own use, had regal jurisdiction, and the king's writ of ordinary justice did not

not run in their dominions. Such, for example, was Etheldred Earl of Mercland, under King Alfred, and his fon King Edward. Selden, Tit. Hon. part 2. chap. 5. fect. 8. Differt. concerning the Antiq. of the Engl. Constitution, part 3.

After the Norman invasion, many of the higher nobility were expressly known as Earls-Palatine. Cheshire was a palatinate, and possessed by its earls, ad gladium, sicut ipse rex totam tenebat Angliam ad coronam fuam. " By the fword, as the " king himfelf poffeffed all England by his crown." The ancient Earls of Pembroke were also palatines, being domini totius comitatus de Pembroch, "lords of the whole county of Pembroke;" and holding totum regale infra praecinctum comitatus fui de Pembroch. This is the language of records. The like regality was claimed in the barony of Haverford. The bishops of Durham had, anciently, omnia jura regalia, et omnes libertates regales infra libertatem suam Dunelmensem. " All royal " rights, and royal privileges within the liberties " of Durham." The Archbishop of York had a regality in Hexham, which, anciently, was flyled a county-palatine. The bishoprick of Ely was a palatinate, or a royal franchife. The earldom of Lancaster was created palatine in the reign of Edward III. Hugo de Belesme, Earl of Shrewsbury, under William II. had the title palatine. The fame thing is mentioned of John Earl of Warren and Surrey, under Edward III. And Humfrey de Bohun, Earl of Hereford and Effex, had a regality within the honour of Breknou. Spelm. Glaff.

de Comite Palatino, Selden, tit. Hon. part. 2. ch. 5. feet 8. Madox, Bar. Angl. p. 150. Camden, Britan, p. 661. 935.

[9] Marculphus has preferved a form or writing by which the conversion of allodiality into tenure took place. The inquisitive reader may consult it in Baluz. Capit. Reg. Franc. tom. 2. p. 382. 383, with the notes of Hieron. Bignon. p. 896. 898.

The agreement of an allodial proprietor and the fovereign, or the feudal lord to whom he was difposed to grant his property, with the view of submitting it to tenure, directed the nature and peculiarity of the obligations to which he was to yield in his new situation. In consequence of the protection of a superior, he was generally to give his military service, and all the aids or incidents of siefs. At other times, however, he was only bound not to take arms against the superior, but to remain at peace, without any connection with the enemies of his lord, and without the burden of the feudal incidents. He was simply to be bound to homage, and a passive fidelity.

It is contended for, indeed, strenuously, and at great length, by Mons. Bouquet, that the greater and lesser jurisdictions were inherent in allodiality. Le droit Public de France. Dr. Smith, in his most ingenious Inquiries concerning the Wealth of Nations, gives his suffrage for the same opinion. And Dr. Robertson, notwithstanding what he has said concerning sies, is, in some measure, disposed to it. Hist. of Charles V. vol. 1. p. 303.

If supreme jurisdiction, however, and eminent prerogatives

prerogatives were connected with allodiality, it feems altogether inconceivable, why its poffesfors should have converted it into fiefs. Perhaps these writers have confounded with allodiality the feudum Francum, or bonoratum, which expressed a condition of it after its conversion into feudality. 'Ut omnia teneant,' fays an old monument cited in Du Cange, 'ab Abbate et successoribus in francum foedum five allodium, ut pro his homagi-'um francum nobis Abbati et successoribus nos-'tris, amplius facere teneantur.' "That they " may hold all these from the abbot and his fuc-"ceffors in free feu or allodiality, and that they " may be more fully bound to make free homage " for these to us and our successors in the abbacy." 'Haec omnia,' fays another charter cited by him, 'habeo et teneo a te D. Raymundo Comite Mel-'gorii ad feodum francum et honoratum, pro quibus 'omnibus prescriptis facio vobis hominium et fi-'delitatem.' "All these I hold in free feu from "you Lord Raymond Earl of Melgor, and for all "which above written I do you homage and fealty." Du Cange, voc. Feudum francum et honoratum. 'Les 'fiefs d'honneur,' fays Salvaing, 'font ceux qui ont ' tellement conservé la nature de leur origine, qu'-'ils ne doivent au feigneur que la bouche et les mains, ' sans aucune charge de quint, de rachat, ni d'au-' tre profit quelconque.' "The Fiefs of honour " are those which have so preserved the nature of "their origin, that they owe to their lord only "the mouth and the bands, without any charge of "ranfom or other profit whatever." Ch. 3.

It is also well known, and might be illustrated by a variety of proofs, that allodial proprietors were so little attended to, and adorned with distinctions, that they could not, without the consent of the king, build, for their protection, a house of strength or a castle. Brussel, usage-general des siefs, vol. 1. p. 368. Yet this privilege was originally of so little account, that it was enjoyed indifferently by every feudal lord.

(10) Du Cange, voc. Gruarium, Pedagium, Rotaticum, Feudum Nummorum, Feudum Soldate. Brussel, Usage-general des siefs, liv. 1. ch. 1. sect. 11. Assises de Jerusalem, avec des notes,

par Thaumassiere, p. 171. 268.

SECT. IV.

[1] Duces ex virtute sumunt. . . ' ces exemplo potius quam imperio, fi prompti, fi conspicui: Si ante aciem agant, admiratione ' praefunt.' " They felect chiefs on account of " their bravery. . . The chiefs com-" mand less by authority than example. " are daring adventurous and confpicuous in ac-"tion, admiration commands obedience." de Mor. Germ. c. 7. 'Ubi quis ex principibus in ' concilio fe dixit ducem fore, ut qui fequi velint ' profiteantur; consurgunt ii qui et causam et ho-' minem probant, suumque auxilium pollicentur, 'atque ab multitudine collaudantur.' " any chief in their councils, fays, that he will be " a leader, that those who are willing to follow " him

"him may declare fo. Those who approve the undertaking and the leader, arise, and promise their affistance, and are applauded by the multitude." Casar, de Bell. Gall. lib. 6. c. 22.

[2] 'Nihil autem neque publicae neque privatae rei, nisi armati agunt. Sed arma sumere non
ante cuiquam moris, quam civitas suffecturum
probaverit. Tum in ipso consilio vel principum
aliquis, vel pater, vel propinquus scuto frameaque juvenem ornant.' "They transact no business either public or private unarmed. But it is
not the custom for any one to assume arms, till
the state has approved him as able to bear them.
Then, in the midst of an assembly, some chief,
or his father or a relation, equips the youth with
a shield or javelin." Tacit. de Mor. Germ.
C. 13.

'These military youths,' says Camden, 'were called in their language Knechts, as they are in 'ours.' Introd. to the Britannia, p. 245.

[3] 'Patri Regi Rex Ludovicus Ingelheim oc'curit, indeque Renesburg cum eo abiit, ibique
'ense jam appetens adolescentiae tempora, accinc'tus est.' "Prince Lewis met the King his father
"at Ingelheim, and from thence attended him to
"Renesburgh, and there, ambitious for the distinc"tions of youth, he was belted with a sword."
Vit. Lud. Pii, an. 791. Of King Athelstane there
is this mention in Malmsbury, 'Nam et avus Al'fredus prosperum ei regnum imprecatus suerat,
'videns et gratiose complexus speciei spectatae
'puerum et gestuum elegantium: Quem etiam
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'premature militem fecerat donatum chlamyde coecinea, gemmato baltheo, enfe Saxonico, cum vagina
aurea.' "For there his grand-father, Alfred,
faw and embraced the youth of a goodly appearance and elegant mien, and he prayed for the
prosperity of his reign. At an early period, he had
made him a knight, by presenting him with a
fearlet cloak, a belt set with precious stones, and
fearlet cloak, a belt set with precious stones, and
fearlet cloak, a belt set with precious stones, and
fearlet cloak, a belt set with precious stones, and
fradidit arma.' To Henry his grand-son David
King of Scotland delivered the arms of manhood." Hen. Huntingdon, lib. 8. See Du Cange,
voc. Arma.

Other particulars, expressive of the an iquity of knighthood, may be seen in the Dissertations on the history of St. Louis. And, with regard to our Saxon ancestors in particular, Mr. Selden has found frequent mention of knights in the charters of that age. Titles of Honour, part. 2. ch. 5. Mr. Hume, therefore, reasons hypothetically, when he admits not of chivalry in the Anglo-Saxon times. Appendix, 11.

The addition Sir to the names of knights, was in use before the age of Edward I. and is from Sire, which in old French signifies feignieur, or lord. Though applicable to all knights, it served properly to distinguish those of the order who were not barons. To knights-baronet, who are a modern institution, and no part of the ancient chivalry, the addition Sir is granted by a clause in their

their patents of creation. Ashmole on the Garter, ch. 1.

The most honourable method of receiving knighthood was from the sovereign. But every possession of a sief could bestow it; and one knight could create another. 'Eorum,' says Spelman, 'fuit militem facere quorum suit feodum dare.' "It was their title to create a knight, who could "grant a sief." Dissert. de milite, ap. Reliq. p. 180. 'Tout chevalier,' says St. Palaye, 'avoit le droit 'de saire chevaliers.' "Every knight, had a title "to create knights." Memoires sur l'ancienne chevalerie, tom. 1. p. 70. A king could receive it from the hands of a private gentleman.

Its value may be remarked in the following peculiarity. 'Scitis,' faid a Lombard king to his courtiers, ' non effe apud nos consuetudinem, ut 'regis filius cum patre prandeat, nisi prius a rege 'gentis exterae arma susceperit.' "You know " that it is not customary with us for a fon to dine " with his father, unless he has first received "knighthood from the king of a foreign nation." Paul. Diac. lib. 1. ap. Honoré de Sainte Marie, difsert. sur la chevalerie, p. 182. 'Liberos suos,' faid Caefar of the Gauls, 'nifi quum adoleverint, 'ut munus militiae sustinere possint, palam ad se 'adire non patiuntur; filiumque in puerili aetate ' in publico in conspectu patris assistere, turpe du-'cunt.' "They fuffer not their fons to approach " them in public till they are grown up and cap-" able of bearing arms. They would efteem it " shameful for a son in his boyish years to attend " publicly Mmij

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" publicly in fight of his father." De Bell. Gall. lib. 6. c. 18.

' Dans les premiers temps,' fays St. Palayae, 'la ' plus illustre naissance ne donnoit aux nobles au-* cun rang personnel, a moins qu'ils n'y eussent a-' joûté le titre ou le grade de chevalier. Jusqu' ' alors on ne les confideroit point comme membres de l'etat, puisqu' ils n'en etoient point encore les foutiens et les defensures : Les Ecuyers apparten-' oient à la maison du maitre qu' ils servoient en ' cette qualité; ceux qui ne l'etoient pas encore, ' n' appartenoient qu' à la mere de famille dont ils ' avoient reçu la naissance et la premiere educa-' tion.' "In early times, the most illustrious birth " did not give the nobles any personal rank, at " leaft until they had added to it the title or degree " of knighthood. Till then they were not confi-" dered as members of the flate, because they were " not as yet its supports and defenders. The squires " belonged to the family of the master whom they " ferved in that quality; those who were not fo, " belonged only to the mistress of the family, of " whom they had received their birth and their " first education." Tom. 1. p. 298.

Tacitus, having described the ceremony of investing the German with arms, adds, 'Haec apud' illos toga, hic primus juventae honos, ante hoc' domus pars videntur, mox reipublicae.' "This "ar ing them is the gown, the first distinction of youth. Before this time, they appear to be "part of the family, but afterwards of the state." De Mor. Germ. c. 13.

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This tendency and concurrence of circumstances is striking; and to these institutions we may trace the contempt with which the rights of minors, both of high and low condition, were treated, in the middle ages. To be in minority was to be nothing. Before his majority, or the investiture of arms, the individual did not seem a citizen or a subject.

[4] 'Virtutem proprium hominis bonum: Dees 'fortioribus adesse.' "They consider bravery as "the peculiar distinction of man, and imagine that "the gods favour the brave." Tacit. Hist. lib. 4. c. 57.

[5] 'Est et alia observatio auspiciorum, qua gravium bellorum eventus explorant. Ejus gentis, cum qua bellum est, captivum quoquo modo interceptum, cum electo popularium suorum, patriis quemque armis committunt. Victoria huijus vel illius pro praejudicio accipitur.' "There is another kind of divination by which they explore the event of wars. They oblige a prisoner, taken by any means from the nation with whom they are at variance, to fight with a chosen man of their own, each with his own country arms. The victory of the one or the other is accepted as a prediction." Tacit. de Mor. Germ. c. 10.

An inftance of the duel is described in Livy, lib. 28. c. 21. And the prevalence of this mode of trial is mentioned by Paterculus, lib. 2. c. 18. It was by single combat that the Celtic and Gothic nations decided the succession to offices, when the candidates were numerous and of equal merit.

This was leaving it to the Deity to determine their pretensions. It was in this manner, that, among the Gauls, the place of the fovereign Druid was supplied, in cases of doubt. 'His autem omnibus ' Druidibus praeest unus, qui summam inter eos ' habet auctoritatem. Hoc mortuo, si quis ex re-'liquis excellit dignitate, fuccedit. At fi funt ' plures pares fuffragio Druidum adlegitur: Non-' nunquam etiam de principatu armis contendunt,' "There is one Druid superior to all the rest, and " who has the supreme authority over them. Up-" on his death, whoever excells in dignity, fuc-" ceeds. But if there is more than one competi-" tor, he is chosen by the votes of the Druids. " Sometimes also they contend for the supremacy " by arms." Caesar, de Bell. Gall. lib. 6. c. 12.

This form of deciding controversies and disputes, continued to prevail after the conquests of the barbaric nations; is to be seen every where in their laws; and became an important article in the jurisprudence of the middle times. The following ordinances illustrate its use and purposes.

'Qui terram suam occupatam ab altero dixerit, adhibitis idoneis testibus, probat eam suam suis'se: Si occupator contradixerit, campo dijudice'tur.' "When a person says that his land has "been occupied by another, let him prove that "the land is his by proper witnesses; but if the "possessor contradicts him, they must decide it in "the field." LL. Saxonum, tit. 15.

'Si quis Adalingum occiderit DC. fol. compo-'nat. Qui liberum occiderit, CC. fol. componat.

Et 'Et de utroque si negaverit, cum xii. juret, aut in 'campum exeat, utrum ille voluerit, ad quem cau'sa pertinet.' "If any one has slain a nobleman, "he shall compound for sive hundred shillings. "He who has slain a free man, shall compound "for two hundred shillings. If he hath denied "either charge, let him, with twelve compurgators, swear to his denial, or let him enter the "field, but the choice of this is to rest with the "complainer." LL. Angl. et Werinor. tit. I.

'Qui domum alterius noctu incenderit, dam'num triplo farciat, et in fredo folid. lx. aut fi ne'gat, cum undecim juret, aut campo decernat.'
"Whoever has fet fire to another's house in the
"night time, shall make recompense of thrice the
"damage, and of fixty shillings for breach of the
"king's peace, or if he denies, let him, along
"with twelve others swear, or let him decide it in
"the field." Ibid. tit. 8.

'Si aut calumiator, aut ille cui calumnia irrogata est, se solum ad sacramenti mysterium perficiendum protulerit, et dixerit: Ego solus jurare volo, tu si audes nega sacramentum meum, et
armis mecum contende. Faciant etiam illud, si
hoc eis ita placuerit; juret unus, et alius neget,
et in campum exeant.' "If any calumniator, or
he on whom the calumny is charged, shall offer
himself alone to make oath, and shall have said,
I am willing to swear alone, do you, if you dare,
deny my oath, and encounter me in arms; let them
do so, if they think proper; let the one swear,
"and

" and the other deny, and let them go to the field." LL. Frision. tit. 11. l. 3.

'Si mulier in morte mariti sui consiliata fuerit 'per se, aut per suppositam personam, sit in po-'testate mariti sui de ea sacere quod voluerit: Si-'militer et de rebus ipsius mulieris. Et si illa

* negaverit, liceat parentibus eam purgare aut per

'facramentum, aut per pugnam, id est, per cam'pionem.' "If a woman has conspired for the
"death of her husband, either by herself, or by

" means of a third person, it shall be in her hus-

" band's power to act as he thinks proper with herfelf, and her effects. And if she denies, let

"her parents exculpate her by oath, or by a

"duel." LL. Longobard. lib. 1. tit. 3. l. 6.

Even from rude times, it is observable, that this trial took place at the command of the magistrate. And, it is probable, that it was in a good measure at his discretion, whether it took effect. If the truth was to be investigated by witnesses, so that complete evidence appeared, and there was no room for doubt, the battle might be avoided. It was, however, much to the taste of martial times. The barbarians, also, believed firmly that Providence actually interfered in their affairs. And this absurdity was encouraged by the Christian clergy, who, like the priess of all religions, found an interest in deceiving the vulgar.

[6] The word nidering or nidernig, was a term of dishonour among the Normans and Danes; and, it is told by the historians of William Rufus, that,

on an occasion which required the speedy aid of his vaffals, including in his fummons, that those of them who neglected to repair to him should be accounted nidering, his standard was immediately crowded *. Du Cange, voc. Nidering.

To apply to a person the term arga among the Longobards, was to fay, that he was a coward and a worthless fellow; and this offence to his honour could not be pardoned. If the accuser perfifted in the affertion, the combat took place; and if he confessed his crime, he was subjected to a fine. LL. Longobard. tit. 5. l. 1.

Of arga, it is remarkable, that, in its original and proper fignification, it meant a person who permitted the infidelities of his wife. 'Proprie ' arga is dicitur,' fays Du Cange, ' cujus uxor moe-'chatur, et ille tacet.' "He is properly termed " arga, who connives at the adultery of his wife." Gloff. vol. 1. p. 319. Spelm. p. 40. A person of this kind was infamous in the extreme, and generally of the vileft condition. The word cucurbita had also this fense; and hence the French coucourd, and our cuckold. Each of these terms, accordingly, in its enlarged acceptation, came naturally enough to fignify a mean, cowardly, and stupid fellow. To have a caput cucurbumum, was to be a block-bead. And, from the confusion of the proper fense of cucurbita, and its enlarged one, the contempt feems to have arisen which, to Nn this

^{*} Nidered and nidering, are words at this day well known in feveral counties of Scotland. They express withering, forunk, blaffed. T.

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this hour, constantly attends even an involuntary cuckold. It is thus, that even words operate upon manners.

The point of honour in Sweden, in early times, is well illustrated by the following law, which I give in the words of Stiernbook, whose book is not commonly to be met with.

'Si dicat vir viro probrosum verbum: Non es ' vir viri compar, aut virili pectore: Ego vero fum ' vir [inquit alter] qualis tu. Hi in trivio conve-' niunto. Si comparet provocans, nec provoca-' tus; talis esto [provocatus] sequior ut dictus suit. ' ut qui nec pro femina nec viro sacramentalis es-' se queat, intestabilis: Si vero comparet provoca-'tus, nec provocans, quam vehementissime trino ' immani clamore exclamet, et fignum in terra ra-' dat, et sit vir ille [provocans] eo deterior, quod verba locutus eft, quae praestare non ausus sit. · Si jam uterque comparent, justis instructi armis, et cadat provocatus, dimidio mulcae pretio [caedes] expiator. Si vero provocans cadit, imputet ' temeritati. Capitalis ei linguae fuae petulantia, ' jaceat in campo inexpiatus.' "If any one shall " fay to another a difrespectful word-You are not " equal to a man, nor have the spirit of a man. I " indeed am a man, fays the other, as good as you; " let them go to the highway. If the challenger " appears and not the person challenged, the lat-4 ter is to be called the worse man, and one of whom " it is unfafe to fwear whether he be a man or wo-" man. But if the person challenged shall appear, " and not the challenger, let him cry out, three " times,

"times, as loudly as possible, and make a mark on the earth, and let the challenger be worse than him, because he spoke what he had not courage to fulfil. If both appear, supplied with proper arms, and the person challenged shall fall, let the slaughter be expiated with half price. But if the challenger falls, let his rashness bear the blame. The insolence of his tongue has been fatal to him, and he may lie in the field unavenged." De Jure Sueonum et Gothorum vetusto, lib. 1. c. 6.

Among the ancient Germans, in the age of Tacitus, the point of honour was carried fo high, that a gamester having risked and lost his liberty and person on the last throw, submitted to voluntary fervitude, allowing himfelf, though ftronger and younger than his antagonist, to be bound and fold by him. 'Ea est in re prava pervicacia; ipsi fidem 'vocant.' "Such is their fleadiness in a bad prac-"tice. They themselves call it honour." Tacit. de Mor. Germ. c. 24. The other words of the paffage are: ' Aleam quod mirere, fobrii inter feria 'exercent, tanta lucrandi perdendive temeritate, 'ut cum omnia defecerunt, extremo ac novissimo ' jactu, de libertate et de corpore contendant. 'Victus voluntariam servitutem adit: quamvis 'junior, quamvis robustior, alligare se ac venire 'patitur.' "What would furprise you, they play "at dice, when fober, as a ferious bufinefs, and "that with fuch a desperate resolution to lose or " win, that when they have loft every thing elfe, " as the last throw, they stake their persons and Nnii " liberties.

" liberties. The lofer goes into voluntary fervi" tude, and though the youngest and strongest,
" suffers himself to be bound and fold."

It is not foreign to the purposes of this work, to remark, that the passion for play followed the conquests of the barbarians; that many ordinances were made to suppress it; and that, to this hour, it is a point of bonour to extinguish game-debts. There is something interesting in this subject, and I cannot leave it without starting a conjecture.

The idea of borrowing under an obligation of repayment, was too cultivated for the German gamester. When he had lost every thing*, he therefore flaked his liberty and his person. Having left his woods, he improved upon this usage; and, instead of endangering his person, gave a pledge as a fecurity that he would pay his loss. 'Wadia dabat.' Lindenbrog. Gloff. voc. Wadium. The usage was not loft. 'En 1368,' says a French hittorian, ' le Duc de Bourgogne ayant perdu foix-' ante francs á la paume contre le Duc de Bourbon, ' Messire Guillaume de Lyon et Messire Guy de la 'Trimouille, leur laissa, faute d'argent, sa ceinture: Laquelle il donna encore depuis en gage au Comte 'd' Eu pour quatre vingt francs par lui perdu au ' meme jeu.' "In 1368, the Duke of Bourgogne

" having

^{*} It does not appear what the German usually played for. It might be, fometimes, the coins of the Romans. 'Jamet' pecuniam accipere docuimus.' "We have taught them to "receive money." Tacit de Mor. Germ. c. 15. His chains and ornaments, utenfils and furs, were probably his common stakes.

"having lost fixty Francs at tennis to the Duke of Bourbon, M. Guillaume de Lyon and Mr. Guy of Trimouille left them his belt for want of money: which he gave afterwards in pawn to to the Count D' Eu for eighty Francs lost by him in the same game." Le Labourer, ap. Saint Foix. tom. 1. p. 343.

The custom of pledges introduced by gaming, grew common in other transactions, and in debts of every kind. From moveables, which were the first pledges, a transition was soon made to land. Hence the mortuum-vadium*, the pawn of land, or the mortgage; and hence also the legal doctrine of distresses. Such a mixture is there of whim and

* 'It is called a dead-gage,' fays Cowel; 'because, what'foever profit it yieldeth, yet it redeemeth not itself by yield'ing such profit, except the whole sum borrowed be likewise
'paid at the day.' The Interpreter, voc. Mortgage.

+ ' Namium et namus] Captio, a Sax. naman, al. nyman capere. Voces prisci fori, haec apud Scotos, illa apud Anglos veteres ufitatior: Res, bona, animalia, quae per distric-' tionem capiuntur fignificantes : Hoc est, ea quae a possessore 'auferuntur, legitimeque retinentur, mulctae vel pignoris no-'mine, quousque id fecerit vel praestiterit, quod non fine in-'juria recusaverit.' " A caption, from the Saxon namen, alias nyman, to take. Two ancient law words, employed, the " one among the Scots, the other more frequent among the "ancient English; they refer to the property, effects, and " cattle of every kind which are taken by distress, that is, "which are taken from the possessor and lawfully retained, " under the name of a pledge or penalty, until he shall have "done or performed that which he has unjustly refused." Spelm. Gloff. See farther the other Gloffaries, and Coke on Littleron.

and accident in the greater as well as the minuter precautions of civil polity!

[7] The forms of trial in the duel at common law, and in the duel for points of honour, were distinct. This subject will be treated in the sequel.

[8] 'Genus spectaculorum unum atque in om' ni caetu idem. Nudi juvenes, quibus id ludi' crum est, inter gladios se atque infestas frameas
' saltu jaciunt. Exercitatio artem paravit, ars de' corem. Non in quaestum tamen aut mercedem.
' Quamvis audacis lasciviae pretium est, voluptas
' spectantium.' "They have only one kind of
" public spectacle, which is exhibited in every
" company. Young men make it their diversion to
" dance naked amidst swords and presented spears.
" Practice has given them skill, and skill gives
" them grace. They exhibit not for hire or gain.
"The only reward of this hazardous game is the
" pleasure of the spectators." Tacit. de Mor. Germ.
c. 24.

There is a remarkable passage in *Procopius* with regard to King *Totilas*, from which we may learn the dexterity which was exhibited in such military sports.

- 'Ipse equo eximio vectus, inter geminas acies armorum ludum scite ludebat. Equum enim cir-
- ' cumagens ac reflectens utroque versum, orbes or-
- bibus impediebat. Sic equitans, hastam in auras
- ' jaculabatur, eamque, cum tremula relaberetur, ' aripiebat mediam, et ex altera manu in alteram
- · saepe trajiciens, ac dextere mutans, operam huic

arti feliciter navatam oftendebat : refupinabat ' fefe, et flexu multiplici nunc huc nunc illuc ita inclinabat, ut appareret diligenter ipfum a pue-'ritia didicisse saltare.' "He himself riding on a " remarkable horfe, displayed in the front of the "two armies, his dexterity in military weapons. "He spurred his horse forward and then forced " him back again, with a variety of wheelings and "turnings. Thus riding he threw his fpear up " into the air, and when it was falling back again, "he caught it by the middle, and toffing it from " one hand to the other, and shifting it skilfully, " he shewed with how much attention he had stu-" died this amusement; again he leaned back and "by the variety of his attitudes discovered with " what affiduity, he had, from his youth, learned " this exercise." * Lib. 4. c. 31.

These ideas make a figure even in the paradise of the Gothic nations. 'Tell me,' says Gangler in the Edda, 'How do the heroes divert them'selves when they are not drinking?' 'Every day,' replies Har, 'as soon as they have dressed themselves, they take their arms; and, entering the lists, sight till they cut one another in pieces: 'This is their diversion. But, no sooner does the hour of repast approach, than they remount their steeds all safe and sound, and return to drink

^{*} Mr. Gibbon has termed Procopius a loquacious Greek, and the redundancy of this paragraph feems to justify his expression. It forms a remarkable contrast to the harsh abruptness and the quaint brevity of Tacitus, an author so frequently quoted in the course of these notes. T

drink in the palace of Odin.' The Edda, or ancient Icelandic or Runic mythology, ap. Northern Antiquities, vol. 2. p. 108. See also Keysler, Antiq. Select. Septentr. et Gelt. p. 127.

[9] In the books of the middle times, torneaments are called ludi militares, militaria exercitia, et imaginariae bellorum prolufiones. "Military "games, military exercifes, and imaginary effays of war." A writer in Du Cange fays, 'Tor- neamenta, dicunt quaedam nundinae, vel feriae, in quibus milites ex edicto convenire folent, et ad oftensionem virium suarum et audaciae temere congregari, vel congredi." They call certain fairs, or holy day torneaments, in which solutions are accustomed to meet by a proclamation, to shew their skill and boldness in arms." Gloss.

These exercises were the great schools of discipline and war. Their high antiquity on the continent may be seen in the differations on the history of St. Louis. And, there is mention of them in England in the days of King Edgar, and at a more ancient period. Selden, duello, ch. 3. Mr. Madox was therefore in a great mistake, when he ascribed the rise of the spirit of torneying to the holy wars. Bar. Angl. p. 281.

The frequent accidents which necessarily happened in the exercise of these representations of war, through the impetuosity of valour, and the extravagance of heroism; the fulminations of the church; and, above all, the jealousy of princes which was excited by armed nobles and their re-

tainers.

tainers, gave them powerful checks. They continued, notwithstanding, to be long in fashion. In England, they were practised in the reign of Queen Elizabeth; and their total disappearance was preceded, under the elder James and his son Charles, by a gentle method of them, termed caroufals.

Torneaments originally were celebrated by all warriors at their pleasure. In after times, the sovereign, as the head of chivalry and arms claimed their direction, and issued out his licenses and prohibitions. Richard I. by the following patent to Hubert, Archbishop of Canterbury, gave license for lists or torneaments in sive places within the kingdom.

'Sciatis nos concessisse, quod torneamenta fint 'in Anglia in quinque placeis, inter Sarum et Wil-'ton, inter Warwick et Kelingworth, inter Stamford 'et Walingford, inter Brakeley et Mixeber, inter Bly et Tikehill, ita quod pax terrae meae non in-'fringetur. Et comes qui ibi torneare voluerit, 'dabit nobis viginti marcas, et baro decem mar-'cas, et miles, qui terram habuerit, quatuor mar-'cas, et qui non habuerit, duas marcas. Nullus 'autem extraneus ibi attorneabit. Unde vobis 'mandamus, quod ad diem torneamenti habeatis 'ibi duos clericos et duos milites vestros, ad capi-'endum facramentum de comite et barone, quod 'nobis de praedicta pecunia ante torneamentum 'fatisfaciet, et quod nullum torneare permittant 'antequam super hoc satisfecerit; et inbreviari fa-'ciant quantum et a quibus receperint. Et decem 00 ' marcas

' marcas pro carta ad opus nostrum capiatis, unde comes Sarum, et comes de Clara, et comes de Warrena, plegii funt. Teste meipso, apud villam ' episcopi vigesimo secundo die Augusti.' "Know " ye that we have granted leave that tornea-" ments may be held in five different places in "England; between Sarum and Wilton; War. "wick and Kelingworth; between Stamford " and Walingford; between Brakeley and Mix-"eber; between Bly and Tikehill fo that the " peace of my country may not be violated. And " the earl who wishes to enter the lifts, shall give " us twenty merks, a baron ten merks, a knight " who possesses land four merks; and he who " has not land two merks. But no foreigner " fhall enter the field. Farther, we command " you that ye have there on the day of the tor-" neament two priefts, and two knights, to ad-" minister the oath to each earl and baron, that " he may fatisfy us as to the above-mentioned " money before the torneament, and that they " may prevent any one from entering the field " before he hath fatisfied our demand; and let "them enter in a register, how much money, " they have received, and from whom. And let " them take ten marks for the paper for our bufi-" nefs, for which the Earls of Sarum, and Clare, " and Warren, shall be fureties. Witness myself, "at the house of the Bishop, the twenty-second " day of August." Ex lib. Rubro Scaccarii, ap. Selden in the Duello; ch. 3.

Edward I. and Edward III. granted the libetry

of holding yearly a just viris militaribus comitatus Lincoln. Richard Redman, and his three companions in arms, had the license of Richard II. bastiludere cum Willielmo Halberton cum tribus sociis apud civitat. Carliol. "To break a spear with " William Halberton and three companions at the " city of Carlifle." And a fimilar liberty was granted to John de Gray by Henry IV. Cottoni Postbuma, b. 63. Edward I. commanded, by proclamation, that no torneaments or justing, or feeking of adventures, and no feats of arms should be celebrated or undertaken without his permission. 'Publice 'fecit proclamari, et firmiter inhiberi, ne quis, ' sub forisfactura terrarum et omnium tenemento-'rum, torneare, bordeare, justas facere, aventuras quaerere, seu alias ad arma ire praesumat, sine 'licentia Regis speciali.' "He caused it to be pub-"licly proclaimed, and strictly forbidden, that any "one should, under the penalty of forfeiting his " lands and tenements, prefume to tilt or make justs "or feek adventures, or prefume otherwife to go "to arms without a special license from the king." Cot. Post. p. 67. There are also prohibitions of torneaments by Henry III. and other princes. They command all earls, barons, knights, and others, under their faith, homage, and affection, and under pain of lofing their lands and tenements, that they prefume not to torney, make justs, seek adventures, or go to feats of arms within the realm, without the king's express leave. See Appendix, No. V.

[10] 'Tum ad negotia, nec minus saepe ad con-

" vivia, procedunt armati." "They go in arms, not only to their councils, but to their entertainments." Tacit. de Mor. Germ. c. 22.

This usage continued during the middle times. The posterity of the Germans went in armour to their parliaments and public councils, and to their private vifits and meetings. Justice, fays Mezeray. was rendered among the Franks by people in arms: The axe and the buckler were hung upon a pillar in the midst of the malle or the court. See bis History under Clotaire II. From this practice among the Anglo-Saxons, the hundred court was, in fome counties, called the Wapentake. The hundreder holding up his lance, it was touched by those of all the members, and thus the affembly was constituted. LL. Edward. Confes. c. 33. Wapnu, fays Whitelocke, is arms, and tac, touch. Notes upon the King's writ for members of Parliament, vol. 2. p. 39.

To this day, in the kingdoms of Europe, the wearing of a fword is a part of drefs. We go in arms to a feaft as well as to a battle, and retain, in orderly times, a custom which habitual danger, and the defects of legislation, made necessary to barbarians. The clergy, it seems, pertinaciously opposed the custom, and it was retained with obstinacy. What is more surprising, they have ceased to exclaim against it, and yet it continues!

[11] 'Scutum reliquisse praecipuum slagitium.
'Nec aut sacris adesse, aut concilium inire igno'minioso fas.' "Their greatest disgrace is to have
"lest

"left behind them their shields. It is unlawful for one thus degraded to join in their religious rites, or enter their assemblies." Tacit. de Mor. Germ. c. 6.

Hence a high composition was allowed to the Frank, who had been reproached injuriously with the loss of his shield. 'Si quis homo ingenuus a-'lie improperaverit, quod scutum suum jactasset, et fuga lapfus fuisset, et non potuerit adprobare. DC. den. qui faciunt fol. xv. culpabilis judice-'tur.' " If any free man hath rashly reproached "another with having thrown away his shield. " and escaped by flight, and is not able to prove "it,* he shall be adjudged to pay five hundred " pence, which make fifteen shillings." Pactus legis Salicae, ap. Georgisch. p. 69. It was by raifing him aloft on a shield, and supporting him on their shoulders, that the Germans proclaimed their fovereign, or lifted up a general to command their armies. Tacit. Hift. lib. 4. c. 15. It was by the fame ceremony that the kings of the Franks were acknowledged. This was their inauguration. The escutcheon or shield, says Favine, is the effential note of a nobleman, a knight, and an efquire. Theatre of Honour, book 1. ch. 2.

The usages which had their rise from arms, make a curious figure in the Gothic nations. We know

^{*} This expression deserves particular notice. Among these barbarians, we see that truth was not a libel, that is, a crime. To suffer, as we do, even in a single instance, the practice of such a maxim, is the last extremity of national disgrace. T

know from Tacitus, that the founding or clashing of arms, expressed approbation in the German assemblies; that a javelin wet with blood, and a war horse, were the rewards of German valour; that suits of armour were a flattering present to the more distinguished chiefs in the German communities; that an interchange of arms constituted the ceremonial of marriage among this people; and, that their only public amusement was the leaping amidst the threatening points of swords and lances. De Mor. Germ. c. 11. 15. 18. 24.

Charlemaigne used to feal his treates with the pommel of his fword: 'With the point of it,' faid he, 'I will maintain them.' St. Foix, Eff. Hift. vol. 2. p. 74. To take arms from a free man, was to deprive him of his rank, and to reduce him to the condition of a flave. LL. Alfr. c. 1. And to put into the hands of a flave the arms of a free man, was to give him his liberty. When an individual gave his oath in a court, or would bind himself in the most solemn manner to the performance of his contracts, he laid his hand on his fword. In the judicial combat, the customs growing out of arms were numerous: Thus, to firike a person with a club, or to give him a blow on the face, was to treat him like a villein; because villeins were permitted to fight only with clubs, and were not allowed to cover their faces with armour. L'esprit des Loix, liv. 28. ch. 20. A free man could not part with his fword as a part of his ranfom. LL. Longobard. lib. 1. tit. 11. l. 33. And what shows, in a particular manner, the feverity of

of the forest-laws, the killing of a royal stag inferred the loss of the shield, or the reduction of a free man to a slave. LL. Forest. Canut. c. 25. From the change of arms there resulted a change of usages. Thus, when archery was introduced, to wound the singer which sends off the arrow, was punished more severely than the maining of the other singers. Lindenbr. Gloss. Digitus.

The old Germans rushed to battle with a loud noise, applying their shields to their mouths, that their voices might rife by repercussion into a fuller and more fonorous fwell. 'Sunt illis haec quoque carmina, quorum relatu quem barditum 'vocant, accendunt animos, futuraeque pugnae 'fortunam ipfo cantu augurantur; terrent enim, 'trepidantye, prout fonuit acies. Nec tam voces 'illae, quam virtutis concentus videntur. Affec-'tatur praecipue asperitas soni, et fractum mur-'mur, objectis ad os scutis, quo plenior et gravior 'vox repercuffu intumescat.' "They have likewise " a kind of verses, by the recital of which, termed "barding, they fire their courage, while, by the " found itself, they foretell the fortune of the fu-"ture battle. For, according as the shout founds " along the line, they feel or inspire terror. Nor "does it feem fo much a mufical exercise, as the "chorus of valour. A harsh piercing note, and a " broken murmur are chiefly affected, which they " render more full and fonorous, by applying their " mouths to their shields." Tacit. de. Mor. Germ.

It merits observation, that, from this usage,

These cries were supposed to incite to valour, and to make the soldier precipitate himself upon the enemy. Montjoie Saint Denis, was a samous cry of the Franks. Deus adjuva, Deus vult, were cries during the crusades. Every banneret, or every knight who had a banner, had a cry peculiar to himself and the troops under him. Barons had also their cries. There were thus general and particular cries. While siess and the seudal militia continued, these cries prevailed in Europe. They were lost on the introduction of an improved military discipline, and of standing armies. Perhaps, it is to these cries, that we must trace the origin of the mottos to ensigns armorial.

[12] 'Scuta lectissimis coloribus distinguunt.'
"Their shields are marked by the choicest colours."
Tacit. de Mor. Germ. c. 6.

On the foundation of the fagum, or the short vest of the Gaul and the German, which covered his arms, shoulders, and breast, coats of arms arose. 'La cotte d'armes a esté le vêtement le plus 'ordinaire des anciens Gaulois: il estoit appellé 'par eux fagum, d'ou nous avons emprunté le 'mot de faye, ou de fayon.' "The coat of arms "has been the most ordinary dress of the ancient "Gauls: it was called by them fagum, from whence "we have borrowed the word faye or fayon." Differt. 1. sur l'Histoire de St. Louis, p. 127. 'Tegu'men omnibus sagum,' says Tacitus, c. 17.

According to this instructive historian, the sagum was adorned with spots and with bits of fur. Eligunt Eligunt feras, et detracta velamina spargunt maculis, pellibusque belluarum.' "They make choice of particular surs, which they variegate with spots, and pieces of the skins of animals." C. 17. And we know from Herodian, that it was sometimes ornamented with silver. Lib. 4.

These things are very curious; and it is impossible not to see in them the colours, the furs, and the metals which are the materials of the science of blzaonry.

When Tacitus mentions the shield, he takes occasion to remark, that the German warriors had the knowledge of coats of mail, and of head-pieces or helmets, but seldom made use of them. His words are, 'Paucis loricae, vix uni alterive cassis, 'aut galea.' "Few are surnished with a coat of "mail, and scarcely here and there one with a "casque or helmet." C. 6. They were about to be more fashionable.

[13] Valer. Maximus, lib. 5. c. 6. Florus, Rom. Rer. Hift. lib. 3. c. 3.

[14] These captives were of the tribe of the Catti, a Germanic people; for, it is surely this tribe that Dio means, when he speaks of the Cenni. 'Horum captae a Romanis uxores, interrogotae ab Antonino, utrum vendi, an occidi mallent, mori se malle responderunt: quumque essent sent postea venditae, omnes mortem sibi consciverunt: Nonnullae una silios intersecerunt.'
"Their wives were taken by the Romans, and being asked by Antoninus, whether they chose to be fold or slain, they answered, that they

"preferred death; and when they were afterwards "fold, they all put an end to their own lives, and "fome of them flew their children." Excerpt. e Dion. p. 876. A multitude of examples, to the fame purpose, might easily be collected, if it were necessary.

But, while we reflect on these things, it must not be fancied, that the German women were deficient in gentleness. A high independent spirit is not inconsistent with the softest passions. There are a few beautiful and energetic words in Tacitus, which may be employed on this occasion, and sinely express the distinctive characters of the sexes in ancient Germany. Lamenta ac lacrymas cito: dolorem et tristitiam tarde ponunt. Feminis lugere honestum est; viris meminisse. "They foon disiniss their lamentations and tears, but slowly their forrow and regret. They think it the women's part to bewail their loss, the men's to remember it." De Mor. Germ. c. 27.

[15] Tacit. de Mor. Germ. c. 7.

[16] St. Foix, Eff. Hift. fur Par. tom. 5. p. 184. [17] 'Regnator omnium Deus, cetera subjecta 'atque parentia.' "God is the ruler of all to "whom the rest of nature is subject and obediment." Tacit. de Mor. Germ. c. 39. This testimony of the purity of the German theology, is well illustrated by the following passage of the Icelandic Edda.

'Ganglerus orsus est tunc suum sermonem. Quis est supremus, seu primus deorum? Har. respondet: Qui nostra lingua Pantopater dicitur. Tunc Gang.

Gang. Ubi est hic Deus? Aut quid potest ef-'ficere? Aut quid voluit ad gloriam fuam manifestandam? Har. resp. Ille vivit per omne aevum, ac gubernat omne regnum suum, et magnas 'partes et parvas.' "Gangler then began his dif-"course: Who is the supreme, the first of Gods? "Har. answers, He who in our language is called "the Father of all. Then, Gangler, Where is this "God? or what can he do? or what does he de-"fire to manifest his glory? Har. replies, He "lives through every age, he governs the whole "of his own kingdom, both great parts and Small." Edda, ap. Northern Antiq. vol. 2. p. 283. [18] 'Auspicia, sortesque ut qui maxime ob-'fervant.' "They are extremely attentive to lots, " and omens." Tacit. de. Mor. Germ. c.q. See alfo, Du Cange, voc. Aucones et Sors. The following form of divination was common to all the German tribes. 'Virgam frugiferae arbori decisam, in sur-'culos amputant, eosque notis quibusdam discretos 'fuper candidam vestem temere ac fortuito spargunt. Mox fi publice confulatur facerdos civi-'tatis, fin privatim, ipse pater familiae precatus 'deos, coelumque suspiciens, ter singulos tollit, ' fublatos fecundum impressam ante notam inter-'pretatur.' "They cut a twig from a fruit tree, "and divide it into fmall pieces, which, diftin-"guished by certain marks, are thrown promiscu-"oully upon a white garment. Then the prieft " of the state, if the occasion be public, if pri-"vate, the master of the family, after an invoca-"tion of the gods, with his eyes lifted up to hea-

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" ven, thrice takes out each piece, and as they " come up, interprets their fignification according to the marks fixed upon them." De Mor. Of this folly, there is yet a remain Germ. c. 10. in the Baguette Divinatoire of the miners in Germany; and it is to be observed, that the heralds of the Franks had confecrated twigs, which they bore as the emblems of peace. Thus the heralds fent by Gundobald to Guntram appeared 'cum virgis confecratis, juxta ritum Francorum, ut sci-* licet non contingerentur ab ullo.' "With con-" fecrated twigs, according to the custom of the " Franks, that they might not be touched by any " body." Gregory of Tours, lib. 7. c. 32. But, what is more remarkable, these twigs came to figure in the investiture of lands. Hence the feoffment or fafine per fustem et per baculum, per virgam et per ramum. Hence the tenure par la verge, which is formally treated by Littleton. On what a fimple foundation do there rife inftitutions, important and interesting in business and society!

[19] Hence the Gothic ordeals, the fire ordeal, and the water ordeal. Of the antiquity of these trials I have spoken in another work. Dissert. on the Antiq. of the Eng. Constitut. part 4. It is observable, that the trials of fire and water, though absurd in the greatest degree, were much encouraged by the Christian clergy. What is more disgraceful to them, they invented modes of trial, founded in the same superstition, and not less absurd. These were the judgment of the cross, the corsned or consecrated morsel, the Eucharist, and the

the fortes fanctorum. By the first, the criminal was to remain with his arms extended before a cross for fix or seven hours, without motion. If he failed in fuftaining this trial, he loft his cause. and was judged guilty. By the fecond, the accufed person swallowed a bit of bread or cheese. over which the priest had muttered a form of execration. If he was guilty, he was fuffocated by the morfel; if innocent, he escaped without injury. In the judgment of the Eucharift, the fymbols of the blood and body of Christ were employed; and they convicted the guilty, by acting as a poison, which inflicted death or fickness. The fortes fanctorum confifted in the opening, at a venture, the Bible, or any holy book, and in confidering as oracular the first passage that presented itself. See Du Cange, vox. Crux, Corfned, Euchariftia, Sors. This impiety, and these impositions on the common understanding of mankind, advanced the temporal emolument of the priesthood; an end, which is at all times more important to them than the interests of religion and virtue.

[20] 'Matrem Deum venerantur. Infigne su'perstitionis, formas aprorum gestant. Id pro ar'mis omniumque tutela, fecurum deae cultorem e'tiam inter hostes praestat.' "They worship the
"mother of the gods; and, as the badge of their
"fuperstition, they carry about them the figures
"of wild boars. This serves them in place of ar"mour, and every other defence: It renders the
"votaries of the goddess safe even in the midst of
"foes." Tacit. de. Mor. Germ. c. 45.

'I know a fong,' faid Odin, 'by which I foften 'and inchant the arms of my enemies, and ren'der their weapons of none effect. I know a fong 'which I need only to fing, when men have load'ed me with bonds; for the moment I fing it, 'my chains fall to pieces, and I walk forth at li'berty. I know a fong useful to all mankind; 'for, as soon as hatred inflames the sons of men, 'the moment I fing it, they are appealed. I know 'a song of such virtue, that, were I caught in a 'ftorm, I can hush the winds, and render the air 'perfectly calm.' The Magic of Odin, ap. North. Antiq. vol. 2. p. 217. Du Cange, Literae Solutoriae, et voc. Incantare.

By fecret or magical operations, it was not only fupposed, that men could defend themselves against all dangers whatever, and render themfelves invulnerable; but that they could even change themselves into wolves, and other animals. The word werwolff expressed this metamorphosis, and the extravagancy is to be traced to a distant antiquity. 'Neuri, ut accepimus, flatis tempori-' bus in lupos transfigurantur; deinde, exacto spa-' tio quod huic forti attributum est, in pristinam ' faciem revertuntur.' "The Neuri, as we have "been told, at certain times, transform them-" felves into wolves, and after the expiration of " the time allotted for this deftiny, they return to "their former shape." Solinus, c. 15. To late times this ridiculous fancy was continued down among the Irish; and Camden was puzzled to account for it. Britannia by Gibson, vol. 2. p. 1350. [12]

[21] These things appear clearly and strongly from the laws which were made against them, after the introduction of Christianity, and from other authentic evidence. Capit. Kar. et Lud. lib. 7. LL. Longobard. lib. 2. tit. 38. Du Gange, voc. Fons, Arbor, &c. Pelloutier, Hist. des Celtes, vol. 2. edit. par Mons. de Chiniac.

[22] Du Cange, voc. Fadus, Fada, Caragus, Dufii, Folleti Daemones, Tempestarii. Edda, Keysler, Antiq. Septentr. et. Celt. Here we have the source of the wonders and extravagancies of the old romance.

'credunt. "At the infligation of the god whom "they supposed to be present with warriors." Tacit. de Mor. c. 7. This deity was called Teut or Tis. After the age of Tacitus, if I am not mistaken, he had usually the name of Odin; and, it is of Odin that Wormius thus expresses himself, 'Suam 'implorantibus opem in bello, instar senis monocutili equo insidentis, et albo clypeo tecti, quandoque se conspiciendum praebuit.' "When he ren-"ders himself visible to those who implore his aid "in war, it is under the figure of an old man "mounted on a horse, and with a white shield." Monument. Dan. c. 4.

[24] Traces of the spirit of gallantry and love, it is to be remarked, appear in a striking manner, even in the religious system of the Gothic nations.

'Freya,' fays the Edda, ' is the most propitious of the goddesses. The place which she inhabits

' in heaven is called " the union of the people."

She goes on horseback to every place where bat-

' tles are fought, and afferts her right to one half

' of the flain; the other half belongs to Odin.

'Her palace is large and magnificent; thence she

' fallies forth in a chariot drawn by two cats. She

' lends a very favourable ear to those who sue for

her affistance. It is from her that the ladies have

' received the name which we give them in our language. She is very much delighted with the

fongs of lovers; and fuch as would be happy in

' their amours, ought to worship this goddess.' p. 76.

In another fable of the Edda, there are the fol-Gefione is a virgin, and lowing particulars, ' takes into her fervice all chaste maids after their death. Fylla, who is also a virgin, wears her beautiful locks flowing over her shoulders. Her ' head is adorned with a golden ribband. She is ' intrusted with the toillette and slippers of Frigega, and admitted into the most important secrets of that goddess. Siona employs herfelf in turning men's hearts and thoughts to ' love, and in making young men and maidens ' well with each other. Hence lovers bear her ' name. Lovna is fo good and gracious, and accords fo heartily to the tender vows of men, that, by a peculiar power which Odin and Frigga ' have given her, she can reconcile lovers the ' most at variance. Varra presides over the oaths ' that men make, and particularly over the pro-

• mises of lovers. She is attentive to all concealed • engagements of that kind, and punishes those

who

who keep not their plighted troth.' Ibid. p.

96. 97.

It is also remarkable, that, in the Gothic Elyfirm, it was beautiful virgins named Valkyriae, who poured out their liquor to the heroes. Keyfler, Antiq. Septr. et Celt. p. 152.

[25] St. Palaye, speaking of the candidates for chivalry, says, 'Les premieres leçons qu'on leur 'donnoit regardoient principalement l'amour de 'Dieu et des dames, c'est a dire, la religion et la 'galantereie.' "The first lessons that were given "them regarded principally the love of God and "the ladies, that is to say, religion and gallantry." Mem. sur l'ancienne cheval. tome 1. p. 7. The Christian knight was not less devout than the Pagan warrior. Anciently, during the celebration of mass in every country of Europe, he drew his sword, and held it out naked, in testimony of his readiness to defend the faith of Christ. Favine, p. 54. Keysler, Antiq. select. Celt. p. 164.

It was the influence of fuch manners which induced that agreeable libertine Boccace very feriously 'to give thanks to God Almighty and the 'ladies' for their affistance in defending him against his enemies;' and which made Petrarch compare 'his mistress Laura to Jesus Christ;' circumstances which appeared so absurd to Mr. Hume.

See his Effays, p. 277.

When the Count de Dunois was about to attack the English army which besieged Montargis, la Hire, a knight and a man of fashion who served under him, having received absolution, joined devoutly his hands, and thus prayed. 'Dieu, je to 'prie que tu fasses aujourd'hui pour la Hire autant 'que tu voudrois que la Hire fist pour toi, s'il é. 'toit Dieu, et tu susses la Hire.' "God, I pray "that this day thou wilt do for la Hire, that which "thou wouldst that la Hire should do for thee, if "he was God, and thou wert la Hire." St. Foix, Est. bist. tome 1. p. 347.

A picture, not less strange, and still more profane, is in the poetry of Deudes de Prades, a canon who had the reputation of being wife and spiritual. He thus laments the death of Brunet, a troubadour, or one of the provencal bards. ' chantoit si bien, que les rossignols se taissoient ' d'admiration pour l'entendre. Avssi Dieu l'a t'il ' pris pour son usage. Je prie Dieu de le placer ' a fa droite. Si la Vierge aime les gens courtois, ' qu'elle prenne celui-la.' " He fung fo well "that the nightingales became filent with ad-" miration to liften. Also God had taken him " for his own use. I pray God to place him at " his right hand. If the virgin loves courteous " gentlemen, let her take this one." Histoire litteraire des Troubadours, tome 1. p. 320

These strokes are expressive, and illustrate, more than the most careful reasonings, the nature and spirit of the devotion of the ages of chivalry. A-midst the decencies and the proprieties which philosophy introduces in cultivated times, we look back, with surprise, to this gross familiarity with the supreme Being, and to this blasphemous insolence. Yet, it is difficult, at the same time,

not to remember, that these things are equalled, if not exceeded, among us, by those gloomy and fanatical men, who having got what they term the new light, conceit themselves the society of the elect, and the friends of God!

SECT. V.

[1] The character or station which preceded knighthood, was that of the ecuyrer, or armourbearer. The candidate for chivalry had formerly been a page, a valet, or a damoiseau. The last term was applied to the sons of men of rank. G. André de la Roque, Traité de la noblesse, p. 7. Moeurs des François par le Gendre, p. 63. Daniel, Hist. de la. milice Françoise, tome 1. p. 94. 95. St. Palaye Mem. sur l'anc. Cheval. partie 1.

In those times, the terms page and valet were not expressive of meanness and low condition, as at present. Du Gange, voc. Valeti et Domicellus. Sir John Fortescue, who was chief justice under Henry VI. has observed, when speaking of England, 'Sunt Valecti diversi in regione illa qui plus 'quam sexcenta scuta per annum expendere possiunt.' "There are several pages in England who "are able to spend more than six hundred [Scu-"ta*] per annum." De Laud. Leg. Angliae, c. 29.

[2] The age of knighthood, it is probable, varied with the nature and weight of the arms which were in use at different periods. In general, it has been

Qq ij years.

^{*} A coin valued at twenty-two shillings and fixpence.

fixed by antiquaries and historians at twenty-one years. This rule, however, could be infringed in favour of fignal merit or high birth. The noviciate of the knight commenced in his feventh year. In that tender age, he turned his attention to the art of war, his mistress, and his catechism. Daniel, Milice Françoise, lib. 3. ch. 4. Reliq. Spelman, p. 174. St. Palaye, Mem. sur l'anc. Cheval. partie 1.

[3] The power of the German priests did not escape the penetration of Tacitus. 'Neque ani-' madvertere, neque vincire, neque verberare qui-' dem nisi sacerdotibus permissum.' " The priest-" hood alone are fuffered to chaftise delinquents, " to inflict bonds or stripes." De Mor. Germ. c. 7. The Christian priests were no less selfish and ambitious. In every country of Europe, they attained immense wealth, and prodigious influence. They prefided in the inferior courts with the civil magistrates; they took their seats in the national affemblies; and, in the preambles of the barbaric laws, they are often mentioned next to the kings themselves. 'Incipiunt,' fays the prologue to the Capitularies of Charlemaigne, 'capitula regum et ' episcoporum, maximeque nobilium omnium Fran-'corum.' "They begin the preamble of kings and " bishops, and the principal nobility of France." Baluz. Capit. Reg. Franc. tome 1. p. 698. It is thus, also, in some of the prefaces to the Anglo-Saxon laws. The powers they assumed were exorbitant, and often improperly exercised. To use the strong language of Bacon, 'they were lovers of lordships, and

and troublers of states.' Hist. and polit. discourse on the laws and government of England.

[4] Selden, Tit. hon. part. 2. ch. 5. fect. 34. 35. Ashmole, Institutions of Garter, ch. 1. fect. 9. Du Cange, voc. Miles. Daniel, Milice Françoise, lib. 3. ch. 4. La Roque, p. 354. 356. A description of the ceremonies used at the creation of knights of the bath, is inserted in the Appendix, No. 6. They were nearly the same with those employed in the creation of the knight-batchelor and illustrate the manners of old times.

[5] The festum tyrocinii, which is the name given in the old historians to the rejoicings on the investiture of knighthood, often lasted many days; and, in the cases of persons of distinction, was solemnized with torneaments and shows. The season of torneaments was also embraced as a fit occasion for conferring knighthood on those whose birth and fortune did not entitle them to exhibit these solemnities. And this, from the principle of giving encouragement to the military art. For the same reason, public entries into cities, coronations, and festivals of every kind were opportunities for the creation of knights.

[6] Spelman, voc. Auxilium. Ashmole, ch. 1. sect. 9. St. Palaye, tom. 1. p. 195. 248. Daniel, Milice Françoise, liv. 3. ch. 4.

When the celebrated Joan d'Arc raised the siege of Orleans, the English commander, the Earl of Susfolk, 'was obliged to yield himself prisoner to a Frenchman called Renaud; but, before he submitted, he asked his adversary whe-

ther

' ther he was a gentleman? On receiving a fatis-

' factory answer, he demanded, whether he was

a knight? Renaud replied, That he had not yet

' attained that honour. Then I make you one, re-

' plied Suffolk. Upon which he gave him the

· blow with his fword, which dubbed him into that

· fraternity; and he immediately furrendered him-

· felf his prisoner.' Hume, vol. 2. p. 340.

[7] The knights affected great magnificence, and more particularly after the holy wars. 'Porta-

' bant autem diversi generis species preciosas, au-

' rum et argentum, pallia oloserica, purpuram,

' ficlades, ostrum et multiformium vestium orna-

menta; praeterea arma varia, tela multiplicis ge-

'neris, infinitas loricas, culcitras de ferico acuvariatas operofe, papiliones et tentoria preciofissima, '&c.

"They carried with them valuable effects of va-

" rious kinds, gold and filver, filk mantles, pur-

" ple, faddle-cloths, and every fort of ornament for

"drefs, befides variety of arms, and weapons of

" every kind, beds and couches curioufly wrought

" with filk, pavilions, and tents of the greatest ex-

" pence." Brompton, ap. Baron. Angl. p. 281.

[8] The horse and armour of a knight were called his contenementum or countenance. Selden, Tit. Hon. part 2. ch. 5. selt. 37.

The respectful behaviour, even to vanquished knights, and indeed the extreme honour in which knights in general were held, is exemplified very strongly in the conduct of Edward III. to Eustace de Ribaumont. This prince thought it necessary to leave England privately for the protection of

Calais

Calais and carried with him the Prince of Wales. The day after his arrival at Calais, a battle enfued between his troops and the French forces commanded by Geoffrey de Charni, who, notwithstanding the truce which had been concluded between the contending powers, had bribed the governor of Calais to surrender the place to him. To prevent this circumstance, was the intention of Edward's visit.

This great prince, who fought as a private genleman under Sir Walter Manny, encountered Eustace de Ribaumont, a hardy and valorous knight, who beat him twice to the ground. Pushed to extremity, Edward had occasion for all his firength and address. After an encounter, sharp and dangerous, he vanquished his antagonist, who furrendering his fword, yielded himfelf his prisoner. The next day the English enjoyed their victory, and in the evening the French prisoners were invited to fup with the Prince of Wales and the English nobility. After supper, Edward himself entered the apartment, and conversed in a strain of compliment and familiarity, with the prisoners. His behaviour to his antagonist Eustace de Ribaumont was more particularly attentive, and is thus described by Froissard. 'Vint le Roi à Messire 'Eustache de Ribaumont : Vous êtes le chevalier 'au monde que veisse onques plus vaillamment af-' faillir fes enemis, ne son corps deffendre, ni ne 'me trouvai onques en bataille où je veisse qui ' tant me donnast affaire corps á corps, que vous avez hui fait; si vous en donne le prix sur tous

· les chevaliers de ma court par droite sentence. ' Adonc print le roi son chapelet qu'il portoit sur ' fon chef (qui etoit bon et riche) et le meist sur 'le chef de Monseigneur Eustache, et dit : Mon-' feigneur Eustache, je vous donne ce chapelet ' pour le mieux combattant de la journée de ceux ' du dedans et du dehors, et vous prie que vous le ' portez cette année pour l'amour de moi. Je ' fai que vous êtes gai et amoureux, et que volon-' tiers vous trouvés entre dames et damoifelles, fi ' dites par tout où vous irez, que je le vous ai don-' né. Si vous quite votre prison, et vous en pou-' vez partir demain, s'il vous plaist.' "The king " came to M. Eustace de Ribaumont. I have " not yet feen in the world a knight who defends " himself, and affails his enemies with vigour like " yours; nor have I ever feen in battle one, who, " body to body, gave me fo much difficulty as " you have done; I give you the preference to all "the knights in my court, by fentence direct. "Then the king took his cap which he wore on " his head (and which was valuable and rich) and " put it on the head of M. Eustace, and faid, " 'Monfieur Eustace, I give you this as the best " combatant in this battle, either on one fide or " the other, and I pray you to wear it for my fake; " I know that you are gallant and amorous, and " that you love to be with ladies and damfels; fay, " wherever you go, that I gave it to you. " are no longer a prisoner, and you may depart " to-morrow, if you please." An. 1348.

[9] Favine, Theatre of Honour, book. 1. St. Palaye

Palaye Mem. fur l'anc. Cheval. partie 4. Selden, Tit. hon. part 2. ch. 5. fect. 37.

[10] The chief strength of armies confisted, at this time, of cavalry. The skilful management of a horse was, of consequence, one of the great accomplishments of a knight or a warrior. It is to be noticed, that this way of thinking characterifed fome of the German tribes, even in the age of Tacitus. The following energetic description of the Tencteri, is applicable, in a striking manner, to the purer ages chivalry. 'Tencleri 'fuper folitum bellorum decus, equeftris discipli-'nae arte praecellunt. Nec major apud Cattos ' peditum laus, quam Tencteris equitum. Sic in-'flituere majores, posteri imitantur. Hi lusus in-'fantium, baec juvenum aemulatio, perseverant se-'nes. "The Tencteri, besides the usual military "reputation, excel in the discipline of cavalry. "Nor are the infantry of the Catti in higher re-" putation than the horse of the Tencteri. Their " ancestors established it, and are imitated by their "posterity. This is the sport of childhood, the "exercise of manhood, and in this their old men " persevere." De Mor. Germ. c. 32.

[11] Hence the distinction of knights banneret and knight bachelors; the latter expression denoting the simple knight; the former, the knight who had a standard and sollowers. The number of knights and esquires who served under the banneret, varied in proportion to his riches, and influence. It is also observable, that this dignity was not always feudal. It was sometimes perso-

nal. Selden, Tit. hon. part 2. ch. 3. sect. 23. and ch. 5. sect. 39. Du Cange, Dissert. sur l'Histoire de S. Louis. Spelm. voc. Banerettus. Daniel, Milice, Françoise, liv. 3. ch. 5.

[12] Favine, Theatre of Honour, book 10. St

Palaye, Mem. fur. l'anc. Cheval. partie 6.

[13] An old ceremonial of chivalry has these words: 'Le Roy Artus d'Angleterre, et le Duc 'de Lencastre ordonnerent et sirent la table ronde 'et les behours, tournois, et joustes, et moult d'autres choses nobles, et jugemens d'armes, dont 'ils ordonnerent pour juger, dames et damoiselles, 'Roys d'armes et heraux.' "King Arthur of "England, and the Duke of Lancaster, ordered "that there should be a round table and jousts, "torneaments, and many other noble things and "feats of arms, appointing for judges ladies and "damsels, kings at arms, and heralds." Dissert. 7. sur l'Histoire de S. Louis, p. 179.

[14] The greater torneaments were those given by sovereigns and princes, to which knights were invited from every part of Europe; for over Christendom, the honour and prvileges of knighthood were the same. The lesser torneaments were those given by the barons.

It deferves observation, that the exhibition of torneaments produced an intercourse between the nations of Europe, which could not but contribute to knowledge and civilization. When there were no express prohibitions, knights followed the more important torneaments wherever they were celebrated, for the purpose of studying the

art of war; and that they might find fignal and proper opportunities of distinguishing themselves, and of cultivating the friendship and acquaintance of illustrious persons of both sexes. It was even the fashion for knights to avoid the restraint of marriage for some years after their installation into the order, that they might consecrate them to the travelling into distant countries, and the visiting of foreign courts, 'a fin de s'y rendre chevaliers 'parfaits.' "In order to render themselves accomplished knights." St. Palaye, tom. 2. p. 8.

From these circumstances, it is obvious, that the strong conclusions of Dr. Robertson, concerning the little intercourse between nations, during the middle ages, are not to be relied upon in all their force, but to be understood with much reserve, and many limitations. Hist. of Charl. V. vol. 1. p. 325. et seq.

[15] This present was called faveur. St. Palaye, tom. 1. p. 95. Hence the pieces of lace or ribband which are yet sometimes distributed at marriages, are termed the bride's favours.

[16] It would be tedious to enumerate and to describe the different forms of exercise or combat which were practised in the torneaments; and it is not necessary in this work. The jouste was the combat of one against one; les armes á outrance, were the combats of six against six, and consisted occasionally of more or sewer persons. Le pas d'armes, was the desence of a pass by one or more persons against every assainst. The curious read-

er may confult the books which treat expressly of torneaments.

[17] Favine on torneaments. St. Palaye, Mem. fur l'anc. Cheval. partie 2.

[18] ' Effigiesque et signa quaedam detracta lu-'cis in praelium ferunt.' "They bring certain " images and standards, from their groves into " battle." Tacit. de Mor. Germ. c. 7. The pofterity of the Germans were equally superstitious under the light of the gospel. 'Les Germains,' fays St. Foix, who had this passage of Tacitus in his eye, 'portoient á la guerre des drapeaux, et ' des figures qui étoient en depôt pendant la paix ' dans les bois facrées.' He adds, ' Nos Rois alloi-' ent prendre de même la chappe de S. Martin sur ' fon tombeau, et l'oriflamme dans l'eglise de S. ' Denis, et les reportoient lorsque la guerre etoit 'finie.' "The Germans carried banners to the " wars, and figures which were deposited during " peace in the feveral woods." He adds, " Our " kings, in like manner, went to take the cloak of " St. Martin from his tomb, and the royal standard " in the church of St. Dennis, and returned them " thither again when the war was ended." Eff. Hift. fur Paris, tom. 2. p. 187.

[19] The Edda, Keysler, Antiq. select. Septentr. p. 149—163. Pelloutier, Hist. des Celtes, liv. 3. ch. 18.

[20] The discerning reader will perceive, that I describe Christianity from the writings of the clergy; because, it is always from their representations of it, that it acts upon society and man-

ners.

extracted

ners. I therefore fpeak politically, and not as an inquirer into theology.

From the pretended friends of Christianity, and from its most zealous partizans, too, I fear, it has received deep and cruel wounds. Its most enlightened and genuine admirers have reason to regret, that it has not been left to defend itself. Were it possible to destroy the comments, the explanations, the catechisms, and the systems of divines, a very considerable blow would be given to insidelity. One can respect the honest doubts of philosophy. But, is it possible to with-hold indignation or scorn, when ability stoops to be uncharitable and disingenuous, when bigotry presses her folly, and spits her venom?

[21] It was Gregory VII. whose magnificent mind first formed the plan of the croifes. The fanaticism, the heroic spirit, and the wild enterprise of knighthood, suggested, doubtless, the idea of them. The advantages they were to give to the holy fee, and the church in general, were numerous and great. The Popes not only conferred remission, or pardon of their fins, on all those who yielded to this madness; but, what was no less interesting, they undertook the protection of their families and affairs. The clergy, of confequence drew immense wealth, by acting as tutors and trustees for widows, pupils, and minors. The troops defigned for these pious projects, could be employed by the church to protect and enlarge its temporalities; and, under the pretence of recovering the holy fepulchre, prodigious fums were to be

extracted from women, the devout, the infirm, and the dying.

From the holy wars it followed, that new fraternities of knighthood were invented. Hence the knights of the holy sepulchre, the hospitallers, templars, and an infinite number of religious orders who shed blood, and deformed society, for the glory of God. Many of these acquired great riches, and all of them increased the influence of the church.

Some writers have fancied, but very abfurdly, that the croifes gave rife to chivalry. Without chivalry the croifes could not have been carried into execution. The Popes and the clergy would in vain have preached, that they were the road to falvation and the gates to heaven.

From the cultivated state of manners in the east, some improvement was imported into Europe by the crusaders. But the crusades deserve not to be considered as the first, or indeed as a very powerful cause of resinement in Europe; though it is to be allowed, that they encouraged a respect for order, and ideas of regular government; and that they made additions to the science of heraldry and the sashions of liveries, and heightened the splendour of equipage and dress.

When the medal, however, is reverfed, there appear many and great disadvantages. They drained the kingdoms of Europe of their inhabitants; they took away their riches, and thereby discouraged trade and the arts; they removed kings and nobles beyond the seas, and introduced

into

into states disquiets and disorder; they added to the power of the Roman see, by affording favourable opportunities for the operation of its policy, and for establishing the right of the Popes to interfere in the temporal affairs of nations; and, in sine, they promoted every pious impertinence, and advanced the most abject superstition.

It is also worthy of remark, that some writers, who have no tincture of philosophy, have treated chivalry and the holy wars as primary and distinctive causes of the refinement of the European states; yet the latter, being really the consequences of the former, their influence ought to have been ascribed to them.

The fame want of penetration is perceivable in those, who, while they urge as a primary source of improvement, the revival of literature, hold out, distinctively, as another cause of it, the civil code, or the laws of the Romans. They might, with equal propriety, record as particular and distinctive sources of refinement, the writings of Cicero, of Livy, or of Tacitus.

During the prevalence of chivalry, it is like-wife to be observed, that the ardour of redressing wrongs seized many knights so powerfully, that, attended by esquires, they wandered about in search of objects whose missfortunes and misery required their assistance and succour. And, as ladies engaged more particularly their attention, the relief of unfortunate damsels was the atchievement they most courted. This was the rise of knights-errant, whose adventures produced romance,

mance. These were originally told as they happened. But the love of the marvellous came to interfere; fancy was indulged in her wildest exaggerations, and poetry gave her charms to the most monstrous sictions, and to scenes the most unnatural and gigantic.

[23] 'Supplicem aut debilem vel arma abjici'entem hostem occidere, etiam hodie apud Go'thos sempiterno opprobrio dignum computatur.'

"To kill a suppliant, a person helpless, or an e-

" nemy who has cast away his arms, is at this day
" considered among the Goths as worthy of eter-

" nal difgrace." Jo. Magnus, Hift. Suec. lib. 4.

In the battle of Poictiers, fought by the heroic Edward Prince of Wales, the King of France was made prisoner; and the behaviour to the captive monarch illustrates, more than any particulars I can mention, the nobleness of the principles of chivalry. The Earl of Warwick conducted the French king, with many demonstrations of respect, to the Prince's tent.

'Here,' fays a great historian, 'commences' the real and the truly admirable heroism of Ed-

' ward: For victories are vulgar things, in compa-

' rison of that moderation and humanity discover-

'ed by a young prince of twenty-seven years of

' age, not yet cooled from the fury of battle, and

' elated by as extraordinary and as unexpected

' fuccefs, as had ever crowned the arms of any

' general. He came forth to meet the captive

' king with all the figns of regard and fympathy;

'administered comfort to him amidst his misfor-

'tunes;

tunes; paid him the tribute of praise due to his valour; and ascribed his own victory merely to the blind chance of war, or to a superior providence, which controuls all the efforts of human force and prudence. The behaviour of John shewed him not unworthy of this courteous treatment: His present abject fortune never made him forget a moment that he was a king: More sensible to Edward's generosity than to his own calamities, he confessed, that, notwithstanding his defeat and captivity, his honour was still unsimpaired; and that if he yielded the victory, it was at least gained by a prince of such consummate valour and humanity.

'Edward ordered a magnificent repast to be 'prepared in his tent for the prisoners, and he 'himself served the royal captive's table, as if he 'had been one of his retinue. He flood at the 'King's back during the meal; constantly refus-'ed to take a place at table; and declared, that, being a fubject, he was too well acquainted with 'the distance between his own rank, and that of 'his royal Majesty, to assume such freedom. All 'his father's pretenfions to the crown of France were now buried in oblivion: John, in captivi-'ty, received the honours of a king, which were 'refused him when seated on the throne: His 'misfortunes, not his title, were respected: And 'the French prisoners, conquered by his elevation of mind, more than by their late discomfiture, burst out into tears of joy and admiration; which were only checked by the reflection, that

'fuch genuine and unaltered heroism in an ene'my, must certainly, in the issue, prove but the
'more dangerous to their native country.' Hume,
Hist. of England, vol. 2. p. 214. See also Ashmole,
p. 673.

Morfels of story like these are precious, and distinguish those historians who can render instructive the details which common writers are only

attentive to make agreeable.

[24] The following was one of the oaths administered by the constable in the duel. 'A. de B. 'ye shall lay your hand ayen on the holy gospels, and fwere that ye shall have no moo wepnes, or ' poynts, but tho that ben affigned you by the ' constable and mareschall, that is to wite, gleyve, 'long fwerd, thort fwerd, and dagger: Nor no 'knyfe, fmall ne grete; ne none engine, ne none othir instrument with poynt: Nor stone of vertue, nor hearb of vertue; nor charme, nor ex-' perement, nor none othir enchantment by you, ' nor for you, whereby ye trust the better to over-' come C. de D. your adversarie, that shall come ' ayens you within these lists in his defence; nor that ye trust in none othir thynge propirly, but ' in God and your body, and your brave quarell; ' fo God you help, and all halowes, and the holy ' gospells.' Dugdale, origin. juridic. p. 82.

[25] The solemn taking away of the sword, the cutting off the spurs, the tearing from the body the coat of arms, and the bruising every piece of the knight's armour, appear to have been cere-

monies of the degradation. Selden, Tit. bon. part 2. ch. 5. sect. 38. Ashmole. p. 620,

Religion came also to concern itself in a matter so important. Priests pronounced over the culprit a psalm, containing imprecations against traitors. Water was thrown upon him to wash away the sacred character conferred by his installation into the order. And, at length he was dragged on a hurdle to the church, where there were said and performed over him the prayers and the ceremonies which are used for the dead. St Palaye, tome 1. p. 320.

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AUTHORITIES, CONTROVERSY,

AND

REMARKS.

BOOK II.

CHAP. I.

SECT. I.

[1] THE ordinary form of homage and fealty varied in some little particulars in different nations, and in the same nations, at different times; and fidelity, while the fief was precarious, could only be promifed during the connection of the lord and the vaffal. The oldest example of these ceremonies which is preserved, and perhaps the most fimple, is that of Taffilon Duke of Bavaria, to King Pepin, in the year 757. It is thus described. 'Taffilo Dux Bajoariarum cum primoribus gentis ' fuae venit, et more Francorum, in manus regis ' in vassaticum manibus suis semetipsum commenda-'vit; fidelitatemque, tam ipfi regi Pipino, quam 'filiis ejus Carolo et Carlomanno, jure jurando ' fupra corpus Sancti Dionysii promisit.' " Tassi-"lon Duke of Bavaria, with the chiefs of his na-"tion, came after the manner of the Franks, " and

"and delivered homage with his own hands into the hands of the king; and swore fidelity upon the body of St. Dionysius, not only to King Pepin himself, but also to his sons Charles and Carlo-mannus." Adelmus, Annal. Franc. ap. Brussel, liv. 1. ch. 1. sect. 7.

From the words more Francorum it is to be inferred, that these usages were of a still higher antiquity; and, indeed, there can be little doubt, that they prevailed from the earliest times. We find them, accordingly, in the Anglo-Saxon period of our history. Nichol. Praesat. ad LL. Anglo-Saxon. p. 6. 7. It is true, notwithstanding, that some eminent authors contend, that they were consequences of the perpetuity of the sies. But the homage of Tassilon, and the Anglo-Saxon sealty, were prior to the general establishment of this perpetuity. And there does not appear any solid reason to think, that these ceremonies were a result of it.

When the exercise of the prerogative of private war among the nobles had spread its disorders and calamity, it became common, both in France and England, to insert a reservation in the form of homage, which limited the fidelity of the vassals of a lord or a chief, to the acts which were not deregatory to the faith they owed to the king. This was intended as an obstruction to the prevalence of private war, and discovered an advancement in the ideas of civilization and government. Saint Louis established it in France; and it appears in England, in what is called 'The Statute 'of

of Homage, in the seventeenth year of Edward II. By this form or ordinance, the vassal, after expressing the sidelity he is to bear to his lord for the lands he holds, is made to add, saving the faith I owe unto our Lord the King.

Out of these usages, in this state of their restriction, there grew, as siefs died away, the ligeance, or allegiance, which every subject, whether a proprietor of land or not, was supposed to owe to his sovereign. Thus, the oath of ligeance or fealty was to produce the oath of allegiance.

[2] I have endeavoured to investigate, in another work, the high antiquity of the feudal incidents. Differt. on the Antiq. of the Eng. Constitut. part. 2. It is a common mistake, that the feudal fruits or incidents were not known in England till the Norman times. This opinion is to be ascribed to the want of curiofity in some inquirers of great name, who have given a fanction to it without deliberation; and to the narrow prejudices of others, who affect to confider the Norman invalion as the proper aera of our political conftitution, from the view of paying a compliment to the prerogative of our kings, by holding out Duke William as a conqueror, and by infulting the consequence of the people. It is in this manner that errors have been engrafted upon errors.

The Anglo-Saxon laws, however, oppose the conceit of the late rise of the seudal incidents with a force that is not to be resisted. They make an actual and express mention of them. And, for formal illustrations of the seudal incidents in the

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Anglo-Saxon times, the reader may confult, The case of tenures upon the commission of defective titles, argued by the judges of Ireland, Mr. Selden, in many parts of his works, and Mr. Whitaker, in his bistory of Manchester.

One of Canute's laws I cannot forbear to mention, because it illustrates very strongly, in this age, the existence of tenures. It ordains that a vaffal who deferts, in an expedition against an enemy, shall forfeit his land to his lord; and that, if he should fall in battle, his heriot shall be remitted, and his land go to his heirs. LL. Canut. c. 75. This defertion was, in all feudal countries, one of the causes of the escheat or forfeiture of the Spelm. Gloff. voc. Felonia. We thus learn, that, in the age of Canute, there prevailed the feudal incidents of escheat and heriot, and that lands were not only granted in tenure, but might go to heirs; a circumstance which may lead us to conceive, that advances were then made towards the establishment of the perpetuity of the fief. This important law is misinterpreted by Wilkins, and, probably, with defign. The learned reader will not require to be informed that his version of the Anglo-Saxon laws is often defective and unfaithful.

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What is worthy of notice, while many writers of England look to Normandy and Duke William for the introduction of the feudal law, and its incidents into their nation, an author of France, William Roville of Alenzon, in his preface to the grand Coustumier of Normandy, contends, That they

they were first brought into that dutchy from England by Edward the Confessor.

The fact is, that these fruits and this law extended themselves over Europe, from no principle of adoption, but from the peculiarity of manners and situation of the barbaric nations who made conquests. There is no position in history which is clearer than this. And Du Cange, in particular, when we consider the amazing extent of his information, is very much to blame, while he fondly holds out the tenet, that the usages and institutions of the European states proceeded chiefly from the manners and customs of France.

[3] Even in the days of Bracton, after the feudal affociation had received its most staggering blows, the doctrines of the reciprocal duties of the lord and the vassal, and their perpetual league, are laid down in strong language.

'Nihil facere potest tenens propter obligatio-'nem homagii, quod vertatur domino ad exhae-' redationem vel aliam atrocem injuriam; nec do-' minus tenenti, e converso. Quod fi fecerint. 'diffolvitur et extinguitur homagium omnino et 'homagii connectio et obligatio, et erit inde jus-' tum judicium cum venerit contra homagium et 'fidelitatis facramentum, quod in eo in quo delin-'quunt puniantur, sc. in person a domini, quod a-' mittat dominium, et in persona tenentis, quod 'amittat tenementum.' "The vassal is liable in " no fervice to his lord on account of the obliga-"tion of homage, which can involve him in the " penalty of forfeiture, or in any other atrocious Tt " injury;

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"injury; nor, on the other hand, is the lord liable in that manner to the vassal. But, if either of them have acted so, the obligation and connection of homage is dissolved and extinguished; and there shall then be a just cause for violating the homage and oath of sidelity, and each of them shall be punished in as far as he has offended; ed; viz. in the person of the lord that he shall forfeit his right of homage, and in the person of the tenant that he shall forfeit his possession."

De leg. et Consuetud. Angl. p. 81.

[4] The state, I know, of the people of old, as described by Dr. Brady, and Mr. Hume, by Dr. Robertson, and a multitude of other authors, was uniformly most abject; and yet the power of the nobles is represented as most exorbitant. They dwell on what they term the aristocratical genius of the times, and seem to take a pleasure in painting the abjectness of the people.

It is remarkable, that these notions are contradictory and inconsistent. The nobles had immense influence; but, in what did this influence consist? Was it not in the numbers and the attachment of their vassals? These were their power; and, did they oppress them? The reverse is the truth. They treated them with the utmost lenity, and it was their interest to do so. The cordiality, accordingly, of the nobles and the vassals, was maintained during a long tract of time, of which the history has been repeatedly written, without the necessary attention to its nature and spirit. The decay, indeed of this cordiality, was to cre-

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ate confusions and oppression; and, what confirms my remark, it was in this situation, that the power of the nobles was to be humbled.

The error I mention was first thrown out by a writer of ability, because it suited the theory he inculcates. It was adopted, for the same reason, by a writer of still greater talents; and nothing more is necessary to give currency to an absurdity. For, the authors who do not think for themselves, but who gain a fashionable and temporary reputation, by giving dress and trappings to other men's notions, will repeat it till it is believed.

[5] Mr. Hume has the following very fingular passage. None of the seudal governments in Europe had such institutions as the county-courts, which the great authority of the conqueror still retained from the Saxon customs. All the free-holders of the county, even the greatest barons, were obliged to attend the sherists in these courts, and to assist him in the administration of justice.' Append. 11.

In every feudal kingdom, notwithstanding this strong affirmation, the comes was known, and the comitatus. The comitatus, or county, was the territory or estate of the comes; and the court he held, and in which he presided, was the county-court, to which the freeholders and seudators were called, and acted as affessors or judges. Du Cange, and Spelman, voc. Comites.

There might, indeed, be a comes who enjoyed not the property of the county, but only a part of it; and, in this case, he was constituted

to exercise jurisdiction in it. The sheriff originally was a very subordinate officer. He was sometimes no more than the depute of the comes. Hence vicecomes was the term by which he was known. Sometimes he was only vested with the care of the king's interest in particular counties. And, in reality, he began only to figure when the jurisdiction of the nobles, in the decline of siefs, had died away to a shadow.

It is faid by Mr. Hume, That the great authority of the conqueror retained the county-courts from the Saxon customs. He thus infers, that these courts were favourable to the royal authority. The fact, however, is exactly the reverse. The greater jurisdiction there is in the nobles and the people, the more limited is the prerogative of princes. The county-courts were eminent and formidable supports of the liberty of the subject. And, instead of giving them encouragement, it was the interest of the conqueror to employ his great authority in their suppression.

Mr. Hume adds, in the spirit of a writer who had made a discovery, 'Perhaps this institution of county-courts in England, has had greater effect on the government, than has yet been distinctly pointed out by historians, or traced by antiquaries.' Ibid.

I have remarked these and other weak places in the works of this illustrious man, that I might show the danger of implicit confidence even in the greatest names. The undue weight of what

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are called great authorities, gives a stab to the spirit of inquiry in all sciences.

[6] The diftinguishing freedom of the Germanic tribes was carried with them into their conquests. Tacitus faid of them, while they were in their woods, ' De minoribus rebus principes confultant, ' de majoribus omnes.' " On lesser affairs the chiefs " deliberate, but upon those of greater importance "the whole people." De Mor. Germ. c. 11. This peculiarity of government, and this importance of the people, appear not only in the history of these nations, but in their laws. The prologue to the laws of the Franks has these words. ' Hoc ' decretum est apud regem, et principes ejus, et ' apud cunctum populum Christianum, qui infra reg-'num Merwungorum confiftunt.' "It is decreed " by the king, the nobility, and the whole Chrif-"tian people who conftitute the kingdom of the " Merovingians." Lindenbr. p. 399. The lex Alamannorum, begins thus. 'Incipit lex Ala-' mannorum, quae temporibus Chlotarii regis una 'cum principibus fuis, id funt, xxxiii. episcopis, 'et xxxiiii. ducibus, et lxxii. comitibus, vel cetero ' populo constituta est.' " Here begin the laws of " the Alamanni, which were decreed in the reign " of King Chlotarius by himfelf, along with his no-" bility, that is, by thirty-three bishops, thirty-four "dukes, and feventy-two earls; together with "the rest of the people." Lindenbr. p. 363. the same sense, we read of the infinita multitudo fidelium who appeared in the Anglo-Saxon parliaments. Spelman's councils. Originally, as in Germany,

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many, in all the European states, every person who wore a sword had a title to go to the national assembly. The sovereign could enact no new laws, and could repeal no old ones, without the consent of the people.

But, in ancient Germany, a reprefentation of the people was even practifed on particular occafions; and we are told by Tacitus, that, when Civilis declared war against the Romans, 'convo-* cavit primores gentis, et promptissimos vulgi." "He " affembled the chiefs of the nation and the most " forward of the people." Tacit. Hift. lib. 4. See farther A Differtation concerning the Antiquity of the English Constitution, part 5. After the erection of the European states, the inconveniencies arising from great multitudes of armed men in councils of business, discovered fully the advantages of representation. And deputies made their appearance in these to consult and defend the privileges and rights of the people. The exact aera of this establishment is not known in any country of Europe. Its antiquity, however, is beyond all doubt. And the commons made a figure in the affemblies of France, termed, les champs de mars, et les champs de mai, in the cortes of Spain, and in the wittenagemots of England.

It is probable, that in France, the people were represented before the age of Charlemaigne. That they were important in the reign of this politic and powerful prince, there are proofs, positive and certain. The instructive work of Archbishop Hincmar, de ordine Palatii places this matter in

a strong light; and Abbé Mably, who copies and comments upon it, acknowledges the fupreme power of the affemblies of those days, selects examples of it, and of the interference and confideration of the people. In fact, nothing of any moment or value, in peace or in war, or in any fubject whatever, could be done without their approbation. 'Lex consensu populi fit, et constitutione 'regis.' "A law is established by the appoint-" ment of the king, and the confent of the people." Capit. Kar. Calv. an. 864. ap. Baluz. tom. 2. p. 177. This conclusion is supported by express, numerous, and concurring testimonies of ancient laws, histories, and ordinances. See Hotoman, Franco-Gallia, cb. 10. 11. Mably Observat. sur l'Hist. de France, lib. 2. ch. 2. Rymer on the antiquity of parliaments, &c. *. These assemblies were very different from the Etats Generaux of after times, when the rights of the people were infulted, and the legislative power came to refide in the fovereign. Yet, it is not uncommon to confound them; and, on the foundation of this error, improper conclusions have been inferred against the commons of England.

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^{*} Mr. Hume, notwithstanding a variety of authorities which oppose his affertions, could express himself to the sollowing purpose. 'The great similarity among all the seudal governments of Europe, is well known to every man that has any acquaintance with ancient history; and the antiquatians of all foreign countries, where the question was never embarrassed by party-disputes, have allowed, that the commons were very late in being admitted to a share in the legislative power.' Append. 11.

At what period the deputies of the people appeared in the cortes of Spain, is uncertain. But the liberty of the Wifigoths, who founded that kingdom, was ferocious; their love of independence was fostered by the ills of the Moorish domination; and their sovereigns, during a long tract of time, were kept in a surprising degree of subjection. Like all the other barbaric tribes who made establishments, the individuals among the Goths who wore swords, assembled originally in the councils of the nation; and when the disadvantages of crowded and tumultuous assemblies were uniformly felt, it is natural to conclude, that the deputies of the people were called to represent them.

From defign, however, in the Spanish government, from the ravages of the Moors, or from the waste and havock of time, no direct proofs of this representation, it is faid, are to be found of an earlier date than the year 1133. Of the appearance of the deputies of the people, at this time, the evidence is produced by Dr. Geddes; and this writer has also published the writs of summons, which, in the year 1390, required the city of Abula to fend its representatives to the parliament Miscellaneous Tracts, vol. 1. There is likewise evidence of a Spanish parliament in the year 1179, in which the deputies of the people were affembled; and of another in the 1210, in which they affifted as a branch of the legislature. Gen. Hift. Spayn. ap. Whitelock, Notes upon the King's Writ, vol. 2. p. 65.

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While liberty and the deputies of the people made a figure, and while the prerogative of the fovereign was restrained and directed by national councils and assemblies in the other countries of Europe, it seems the height of wildness to conclude, as many have done, that, in England, the inhabitants were in a state of slavery, and that the mandate of the Prince was the law. His condition, so far from being despotic, was every moment exposed to danger and insult. He might be deposed for a slight offence. He was elected to his office. And, his coronation-oath expressed his subjection to the community, and bound him to protect the rights of his subjects.

The Anglo-Saxon laws are proofs, that, inflead of governing by his will or caprice, he was
under the controul of a national affembly. In
the preambles to them, we find, that the wites
or fapientes were a conflituent branch of the government. The expression feniores sapientes populi mei, is a part of the prologue to the ordinations of King Ina, an. 712. And these sapientes
populi, or deputies of the people, appear in the
laws of other princes of the Anglo-Saxons. LL.
Anglo-Saxon. ap. Wilkins.

It is very remarkable, that the term fapientes, as may be feen in Du Cange, in his explanation of it, expressed, in Italy, in ancient times, those who governed the affairs of cities and communities. When men, therefore, of this fort are uniformly mentioned as a part of the Anglo-Saxon wittenagemots, it is impossible, but to prejudice, not to

fee, that they must have acted as the representatives of the people, and must have procured this distinction from the opinion entertained of their wisdom or experience.

By a curious testimony, it is even obvious, that the word fapientes must have meant the commons. In the supplication del county de Devonshire, to Edward III. there are these expressions, 'que luy 'please par l'avys des prelats, countees, barons, 'et autres sages in cest present parliament ordei, 'ner,' &c. "The bishops, the earls, barons, and "other sages in this present parliament ordain." This supplication is printed in the 4. Inst. p. 232. In the reign of the third Edward, from the auters sages expressing the commons, it may surely be decisively inferred, that sapientes had the same meaning in older times.

In fact, the expressions which denote the Anglo-Saxon assemblies, allude to their nationality. Commune concilium, conventus omnium, concilium cleri et populi, omnium principum et omnium sapientum conventus,' &c. "The common council, the general assembly, the assembly of the clergy and people, the convention of all the chiefs, and all the wife men," are appellations which mark forcibly the interference and assistance of the commons*.

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^{*} Mr. Hume has observed, indeed, that 'None of the ex-'pressions of the ancient historians, though several hundred 'passages might be produced, can, without the utmost violence, be tortured to a meaning which will admit the Commons to be constituent members of the great council.' Ap. 11. It is painful to remark a want of candour so glaring in so great a man.

In the annals of Winchelcomb, an. 811. there is to be seen the term procuratores, as expressive of a branch of the wittenagemot. It also occurs in a charter of King Athelstane. And, that the persons denoted by it were the deputies of the people, seems past all doubt, when it is recollected, that, in the Spanish writers, this order of men is expressed by procuradores de las cividades y villas. Nay, in Polydore Virgil, we meet the expression procuratores civium populique. p. 478. ap. Whitelocke, vol. 1. p. 378.

To these notices I might add a multitude of authorities, respectable and positive. But I mean not now to enter fully into the dispute concerning the importance of the people. To give completeness to the spirit of my present volume, it is sufficient for me to affert the antiquity of the commons, in opposition to an opinion of their late rise, which a modern historian, of great reputation, has inculcated, with that hardiness which he displays in all his writings, but with little of that force of thought and of reasoning which does honour to his philosophical works.

Mr. Hume, struck with the talents of Dr. Brady, deceived by his ability, disposed to pay adulation to government, or willing to profit by a system, formed with art, and ready for adoption, has executed his history upon the tenets of this writer. Yet, of Dr. Brady it ought to be remembered, that he was the slave of a faction, and that he meanly prostituted an excellent understanding, and admirable quickness, to vindicate

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tyranny,

With no less pertinacity, but with an air of greater candour, and with the marks of a more liberal mind, Mr. Hume has employed himself to the same purposes; and his history, from its beginning to its conclusion, is chiefly to be regarded as a plausible defence of prerogative. As an elegant and a spirited composition, it merits every commendation. But no friend to humanity, and to the freedom of this kingdom, will consider his constitutional inquiries, with their effect on his narrative, and compare them with the ancient and venerable monuments of our story, without feeling a lively surprise, and a patriot indignation.

[7] The general doctrines concerning wardships may be seen in Craig, lib. 2. Du Cange, voc. Custos, Warda. La Coutume reformée de Norman-

die, par Basinage, Art. des Gardes.

In that instructive collection of records, The History and Antiquities of the Exchequer of the Kings of England, by Mr. Madox, there are the following examples of the sale of wardships by the crown, in the times which passed from Duke William to King John.

Godfrey de Cramavill gave xxvl. xs. for the custody of the land of Aketon, which was Ralf de Heldebouill's, and of Ralf's heir during his nonage. Hugh de Flammavill profered xl. for the custody of his sister, with her land. Ralf de Gernemue gave a fine of lx marks, that he might have the custody and donation of Philipp de Niwebote's daughter, with her inheritance. Earl David

David gave cc marks to have the custody of Stephen de Cameis, with his whole land, till his full age; saving to the King the service of the said land; and Earl David was to make no destruction upon it. And Philip Fitz-Robert gave ccl. and c bacons and c cheeses for the wardship of the land and heir of Ivo de Munby, till the heir came to be of full age. Vol. 1. p. 323. 324.

In remarking these fales, the value of money in its variations, is to be attended to. From Mr. Madox, it appears, that, 'in the reign of Henry 'III. Simon de Montfort gave ten thousand marks to have the cuftody of the lands and heir of Gil-' bert de Unfranville, until the heir's full age, with 'the heir's marriage, and with advousons of 'churches, knight-fees, and other pertinencies 'and escheats;' and Lord Lyttleton has calculated the amount of this payment, according to the present value of money. 'Ten thousand 'marks,' he observes, 'containing then as much ' filver in weight as twenty thousand pounds now; 'and the value of filver in those days, being un-'questionably more than five times the present va-'lue, this fum was equivalent to a payment of above a hundred thousand pounds made to the 'exchequer at this time.' Hist. of Henry II. vol. 2. p. 207. Madox, vol. 1. p. 326.

[8] Of reliefs in England, it is fufficient to give the following examples, as they will fully illustrate the oppressions which must have resulted from the exaction of this feudal incident.

In the fifth year of King Stephen, Walter Hait

gave v marks of filver for relief of his father's land. Alice, wife of Roger Bigot, gave c and fourfcore and xviiil. for her father's land or manour of Belvoir. Humfrey de Bohun paid xxiil, and xs. for relief of his father's land. Waleran FitzWilliam answered xxxiiil. vis. and xiiid. for relief of his land. In the reign King Henry II. William Fitz William paid xxv marks for relief of his land; Theobald de Valeines xxx1. for relief of fix knight-fees; and Robert de Dudaville x marks for relief. In the reign of K. Richard I. Robert de Odavill's fon paid c marks for acceptance of his homage, and for relief and feifin of his land; Walter de Niewenton paid xxviiis. and iiiid. for feifin of the fourth part of a knight's-fee, which was taken into the King's hands for default of paying relief. William de Novo Mercato gave c marks, that the King would receive his reasonable relief, to wit, cl. In the reign of K. John, John de Venecia gave ccc marks for feifin and relief, and did homage to the Ving, and was to make the King an acceptable resent every year. Geoffrey Wake gave cc marks for his relief. Madox, Hift. of the Excheq. vol. I. p. 316. 317.

The minute steps in the history of reliefs, and of the other feudal perquifites, are no part of this The reader who would inveftigate English reliefs still farther, may consult. LL. Guliel. LL. Hen. I. Chart. Johan. &c. and, for their state in foreign countries, he may confider what is faid in Bruffel, usage-general des fiefs, liv. 2. Affiffes de

Jerusalem, and the Glossaries.

[9] Littlteon on tenures, § 107. Du Cange, Difparagare. La Coutume reformée de Normandie.

[10] Celestia, wife of Richard fon of Colbern, gave xls. that she might have her children in wardship with their land, and that she might not be married, except to her own good-liking. liam Bishop of Ely gave ccxx marks, that he might have the custody of Stephen de Beauchamp, and might marry him to whom he pleased. William de St. Marie-church gave p marks, to have the wardship of Robert, son of Robert Fitzharding, with his whole inheritance, with the knight's-fees, donations of churches, and marriages of women thereto belonging; and that he might marry him to one of his [William's] kinfwomen; provided, that Robert's land should revert to him, when he came to full age. Bartholomew de Muleton gave c marks, to have the custody of the land and heir of Lambert de Ybetoft, and that he might marry Lambert's wife to whom he pleased, but without disparagement. Geoffrey Cross gave marks, for the wardship of the lands and heirs or Sampson de Mules, who held of the king in eapite, by ferjeantry, with the marriage of the heirs. John Earl of Lincoln, conftable of Chester, fined MMM marks, to have the marriage of Richard de Clare, for the behoof of Maud, eldest daughter to the faid Earl. Gilbert de Maisnil gave x marks of filver, that the king would give him leave to take a wife. Lucia, Countess of Chester, gave D marks of filver, that fhe might not be married within five years. Cecilie, wife of Hugh Pevere,

gave xiil. xs. that she might marry to whom she pleased. Ralf Fitz William gave c marks sine, that he might marry Margery, late wise of Nicholas Corbet, who held of the king in chief, and that Margery might be married to him. And Alice Bertram gave xx marks, that she might not be compelled to marry. Madox, Hist. of the Exchequer, vol. 1. p. 322—326. 463—466.

These valuable notices are from records in the reigns of Henry II. Rich. I. King John, Henry III.

and Edward I.

[11] Henry II. levied an aid of one mark per fee, for the marriage of his daughter Maud to the Duke of Saxony. Of this aid, the proportion of the Earl of Clare for his own knight-fees, and for those of his lady the Countess, of the old feofment, was 'fourscore and fourteen pounds and 'odd;' and for his fees of the new feofment, it was ciiis. 4d. The feofments which had been made either to barons or knights, before the death of Henry I. were called vetus feffamentum. Fees of the new feofment were from the accession of Henry II. This appears from the Black Book of the Exchequer.

Henry III. had an aid of xls. of every knight's fee to make his eldest son a knight. When King Richard was taken and imprisoned on his return from the holy wars, an aid was given for the ransom of his person. The barons and knights paid at the rate of xxs. per see. Madox, Hist. of the Excheq. vol. 1. p. 572. 590. 596.

In all cases of aids, the inferior vassals might

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be called to affift the crown vaffals. They were even to contribute to extinguish their debts.

[12] Du Cange, voc. Auxilium. Bruffel, Ufage-general des Fiefs en France. Couft. Norman. Madox, hift. of the Excheq. vol. 1. p. 614-618.

[13] Spelman, voc. Felonia. Lib. Feud. Etablissemens de S. Louis, liv. 1. Craig, Jus Feudale, lib. 3.

SECT. II.

[1] It is to be conceived, that, originally, little ceremony was employed in the duel. Book I. Chap. 2. fect. 4. and the Notes. But, as ranks and manners improved, a thousand peculiarities were to be invented and observed. This institution, accordingly, is one of the most intricate in modern jurisprudence. It would be improper to attempt to exhaust, in a note, a topic which would require a large volume. It is only my province to put together some remarks.

I begin with a distinction which has escaped many inquirers, who have thence wandered in contradiction and obscurity. The duel was, in one view, a precaution of civil polity; in another, an institution of honour. These distinctive characters it bore in its origin. Book I. Ch. 2. sect. 4. And, in these different respects, it was governed by different forms. The common law, and the ordinary judges, directed it in the one condition; the court of chivalry, or the constitutions

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which

which gave a foundation to this court, governed it in the other. In reading what many authors have amassed on the duel, it is difficult to know what refers to the former state of the matter, and what to the latter. They either knew not the distinction, or possessed an impersect notion of it. Even in the researches of Montesquieu, concerning the judicial combat, there is thence, perhaps, a faintness and embarrassiment; and, in the observations of Dr. Robertson, on the same subject, the confusion is evident and palpable. See Note 22, to Charles V.

It has been affirmed, indeed, that the court of chivalry was not known till the eleventh century. or till a period still later. And, it is probable, that this court, in all its formalities, and in its condition of greatest splendour, existed not in an early age. But there is evidence, that its duties were exercised in very ancient times. And, from an examination of the oldest laws of the barbarians, it is to be inferred, that the business of it, except perhaps in a few inflances, was not determined by the common judges. We know, at least, with certainty, that, in England, in the Saxon aera, before a regular court of chivalry was established, points of honour and of war were under the direction of the beretochs, while the duel, as a civil rule, was at the direction of the common judges; and that, in the Norman age, when the court of chivalry was formally in existence, with extensive powers, the constable and the marshal had succeeded to the jurisdiction of the heretochs. Spelman, Gloff. Gloff. p. 400. Sir Edward Coke on the court of chivalry.

The determination of a doubt, for which no complete evidence could be produced, was the end of the duel as a civil precaution. The decision of points of honour, and disputes of arms, or the satisfaction of a proud and a wounded spirit, was the end of the duel, as an institution of chivalry. While the common judges of the land managed the duel in the former instance, as an object of common law, it was governed in the latter by the judges in the court of chivalry, that is, by the constable and the marshal; and the forms of procedure in these cases were essentially different.

Of the court of chivalry, the jurisdiction regarded matters of war, precedency, and armorial distinctions, as well as points of honour; and treafons, and deeds of arms committed without the realm, were objects of its cognizance. In a word, where the common law was defective, the powers of the constable and the marshal were competent.

4. Institut. c. 17.

Yet, from these officers, there lay an appeal to the sovereign, as the head of arms, and he might stop, by his power, their proceedings. It is thence that we find the Kings of England superfeding combats of chivalry. It was as the head of the civil state that they could superfede the combats of right, or at common law. Instances of their jurisdiction, in both cases, are not unusual. An exertion of it, in the duel of chivalry, took place

the intended combat between Lord Rae and Mr. Ramfay. The Lord Rae, a Scots baron, impeached Ramfay and Meldrum for moving him beyond the feas, to join in the treasons of the Marquis of Hamilton. Ramfay denied the fact, and offered to clear himself by combat. A court of chivalry was conftituted, by commission under the great feal; and the parties were on the point of engaging, when Charles I. interpoling to prevent the duel, fent them prisoners to the Tower. Kennet, complete history of England, vol. 3. p. 64. An interpolition in the duel at common law, was exercised in an intended combat in a writ of right between the champions of Simon Low and Jo. Kine, petitioners, and of Thomas Paramore, defendant. The battle was discharged by Queen Elizabeth. Spelm. Gloff. p. 103.

In the duel by chivalry, champions were not usual; because questions of honour required the engagement of the parties. In the duels of right, the parties might have champions, because the trial was merely an appeal to the Divinity, who was to decide the truth by affisting, miraculously, the cause of the innocent person; and this affistance might be manifested either to himself or to his representative. The fashion, however, of martial times, was an inducement to the parties themselves to engage: And, in general, champions were only proper for the old and infirm, for priests, minors, and women. Du Cange, voce Campiones.

Anciently, in the duel of right, there was a discretionary

discretionary power in the judges to determine in what cases it was necessary; and this was a proper reftraint on the violence with which the duel was courted, in preference to other modes of trial. Bruffel, Usage general des Fiefs, liv. 3. cb. 13. Express laws were even made to describe the occafions in which alone it was to be expedient. There is, on this head, the following regulation of Henry I. 'Non fiat bellum fine capitali, ad ' minus x fol. nifi de furto vel hujusmodi nequitia ' compellatio fit, vel de pace regis infracta, vel in 'illis in quibus est capitale mortis, vel diffamatio-'nis.' "There shall not be a duel, unless on ac-" count of a heinous crime, for a smaller sum than "ten shillings, or unless on account of theft or " fome other offence of that nature, or a breach " of the King's peace, or in those cases in which " the punishment is death or infamy." LL. Hen. I. c. 59.

In the reign of Henry II. it was the practice to permit the defendant to take his choice between the affize or jury and the duel. 'Habebit electionem,' fays Bracton, 'utrum se ponere velit super 'patriam, utrum culp. sit de crimine ei imposito, 'vel non: Vel desendendi se per corpus suum.' He shall have his choice, whether he chuses to "put himself upon his country, and be tried "whether or not he is guilty of the crime charged or not, or whether he will desend himself by bis "own body." Lib. 3. c. 18. This marks the decline of the duel, and accordingly, it gradually gave way to the jury. To this alternative of be-

ing tried by one's country, which expresses the form of the ju y, or by the duel, which expresses the appeal to the Divinity, there is yet an allusion in the question proposed to a culprit, and in his answer. Culprit. How wilt thou be tried? His reply is, By God and my country. There is here a rule of law which has survived its cause or necessity. The alternative is suggested in the question, when no alternative exists. And the answer includes both trials, when one only is in practice. Absurdities of this kind, for they surely deserve this name, must be frequent in the progression of jurisprudence in all nations.

The duel of chivalry loft its legality with the fall of the court of chivalry. It left behind it, however, the modern challenge or duel, which it is dishonourable to refuse, and illegal to accept. The jury, which swallowed up the duel at com-

mon law, could here afford no remedy.

A punier, though a more useful relic of the honourable court of chivalry, which was once so high in repute, that it was in danger of incroaching on the jurisdiction of other courts, is yet familiar in the heralds who manage armories, descents, and funerals, and who record admissions to the peerage.

The decay of the manners of chivalry, was the distant cause of the fall of this court; and its immediate one was, perhaps, the jealousy of the great powers of its judges. There has been no regular high constable of England since the 13th year of Henry VIII. And the mareschal dwind-

led down into a personal distinction, or name of dignity.

In France, points of honour were originally under the cognizance of the maire of the palace; and this officer, who was to acquire the greatest powers, appeared in times of a remote antiquity. Du Cange, voc. Major Domus. After the age of Hugh Capet, this dignity was suppressed; and out of its ruins four courts arose. One of these was the court of chivalry, or the offices of the high constable and marshal. The other courts were those of the high chancellor, the high treasurer, and the grant master of France, or the judge of the King's household. For, in the aera of his grandeur, the maire of the palace had engrossed to his jurisdiction whatever related to arms, justice, and finance.

[2] It has been contended, that a knight's fee confifted regularly of a certain number of acres. Spelman, voc. Feodum. Camden, Introd. to the Britann. p. 246. But the value of acres must have varied according to their fertility and situation; and it seems the more probable notion, that a proportion of land, of a determined value, no matter for the quantity of the acres, was what in general constituted a knight's fee. The consideration of the revenue that was necessary for the maintenance of a knight, and for the furnishing of his arms, would direct the extent of the land. The will of the grantor, however, and the consent of the receiver, might constitute any portion

of land whatever a knight's fee, or subject it to the service of a knight.

This is put past all doubt by the following remarkable paper in the Black Book of the Exchequer, which certifies Henry II. of the state of the knight's fee of one of his vassals.

Carta Willelmi, filii Roberti.

Karissimo Domino suo H. regi Anglorum, Willelmus, filius Roberti, salutem. Sciatis, quod de vobis teneo seodum. 1. militis pauperrimum, nec alium in eo seodavi, qui vix in sufficienta, et sicut tenuit pater meus. Valete.

" Charter of William, the fon of Robert.

"William the fon of Robert, to his most be"loved fovereign, wishes health. You know
"that I hold from you the very poor see of one
"knight, nor have I another see than this which
"my father held in the same way, and which is
"hardly sufficient for my support. Farewell." Liber. Niger Scaccari, vol. 1. p. 247. edit. 1771.

In the records of England, there is mention alfo of the *small* fees of the honour of Moreton; and
it is supposed that the fees which were granted
previous to the death of Henry I. were in general
more extensive than those which were posterior to
it. *Madox*, *bist.* of the Excheq. vol. 1. p. 649. In
England, as well as in France, there are even frequent examples of whole manours which were
held by the service of one knight, and accounted
as a single knight's fee. *Dugdale's baronage*, vol. 2.

p. 107. Notes sur les Assifes de Jerusalem, par Thaumassiere, p. 252.

But, there were not only poor fees granted out by the crown. There were even grants in capite of the half of a knight's fee, and of other inferior portions of it. Of this the charters which follow are inftructive evidence.

Carta Guidonis Extranei.

Gwido extraneus tenet de Rege Alvin delegam per servitium dimidii militis.

Charter of Guy Strange.

"Guy Strange holds of the king the lands of "Alvin, by the fervice of half a knight."

Carta Robertii, filii Albrici.

Domino suo Karissimo H. Regi Anglorum, Robertus, filius Albrici Camerarii, salutem. Sciatis, Domine, quod ego teneo de vobis feodum dimidii militis. Valete.

" Charter of Robert, the fon of Albricius.

"To his most beloved sovereign Henry King of England, Robert, the son of Albrice, wishes health. You know, my lord, that I hold from you the see of half a knight. Farewell."

Carta Willelmi Martel,

Ego Willelmus Martel teneo in capite de rege quartam partem feodi. 1. militis in Canewic juxta Y y Lincolniam Lincolniam de antiquo fefamento, unde debeo ei facere servitium, et nichil habeo de novo fefamento in comitatu Lincolniae.

" The Charter of William Martel.

"I William Martel hold in capite, from the king, "the fourth part of one knight's fee in Canewic, "near Lincoln, on an old enfeofment, by which I man bound to do him fervice, and I have nothing from my new enfeofment in the county of Lincoln." Lib. Nig. Scaccarii, vol. 1. p. 147.217.269.

It was chiefly the polity or the natural beneficence of princes and nobles that varied the condition of fees. At times, the fee was fcarcely fufficient for the fervice required; and, on other occasions, it was infinitely plentiful, and beyond all proportion to the military purpose of the grant. Its value, on an average, is, however, to be calculated from records and acts of parliament. From William the Norman till King John, it was in progression, a five, a ten, a fifteen, and a twenty pound land*. In King John's times, it grew to be a forty pound land; and, before the aera of the act of parliament which took away and abolished the military part of the feudal system, the knight's fee was computed at L. 200 per annum. These things are very curious, and might lead to political

^{*} Sir William Blackstone seems to think, that the knight's fee, in the reign of the Conqueror, was stated at L. 20 per annum, which is certainly a mistake. Book 2. ch. 5.

political reasonings of importance. Spelman, voc. Miles, Ashmole on the Order of the Garter.

[3] Baronies and earldoms could be created or made to confift of any number of fees whatever. Thus, the barony of William de Albeney Brito confifted of thirty-three knight's fees, the barony of Earl Reginald, of two hundred and fifteen knight's fees, and a third part of a fee; and William de Meschines had a barony of eleven knight's fees. Madox, Baronia Anglica, p. 91. Thus the earldom of Geofrey Fitzpeter Earl of Essex confisted of fixty knight's fees; and that of Aubry Earl of Oxford, of thirty knight's fees. Selden, Tit. bon. part. 2. ch. 5. sect. 26. Instances to the same purpose might be collected in the greatest profusion.

From facts fo particular, it is, I conceive, to be concluded, that Sir Edward Coke is mistaken, when he lays it down, that a barony confifted, in ancient times, of thirteen knight's fees and a third part, and that an earldom confifted of twenty knight's fees. I. Institut. p. 69. 70. According to this way of thinking, some of the barons and earls whose names are now recited, must have posfessed many baronies, and many earldoms; an idea which is furely not only strange, but abfurd. The supposition that nobility is inherent in a certain and determined number of fees, which this opinion implies, is a notion, that does not correfpond with feudal principles. The nobility was given, not by the mere possession of the fees, but by their erection into an honour by the fovereign.

Yet Sir Edward Coke had an authority for what he faid. It is the old treatife, termed the Modustenendi parliamentum. This treatife, however, is not of fo high a date as the Saxon times, to which it pretends; and the circumstance of its assumed antiquity, with the intrinsic proofs it bears of being a frabication in the times of Edward III. detract very much from its weight. And, in the present case, it is in opposition to indubitable monuments of history.

I am fenfible, that Sir William Blackstone has faid expressly, 'That a certain number of knight'fees were requisite to make up a barony.' Book 2.
ch. 5. He has not, however, entered into any detail concerning this position. I should, therefore, imagine, that he has relied implicitly on the authority of Sir Edward Coke, which ought not, perhaps, to be esteemed too highly in questions which have a connection with the feudal institutions*.

Nor

That Lord Coke had neglected too much the feudal cuftoms, was a matter of lamentation to Sir Henry Spelman. It is with a reference to them, that Sir Henry thus speaks. I do marvel many times, that my Lord Coke, adorning our law with so many flowers of antiquity and foreign learning, hath not, (as I suppose), turned aside into this field, from whence so many roots of our law have, of old, been taken and transplanted. I wish some worthy lawyer would read them diligently, and show the several heads from whence those of ours are taken. They beyond the seas are not only diligent, but very curious in this kind; but we are all for profit

Nor is it in England only that examples can be produced to refute this notion about the conflitution of baronies and earldoms. In Normandy, five knight's-fees might form a barony; and of this the following testimonies are an authentic proof. 1. Ricardus de Harcourt tenet honorem S. Salvatoris de domino rege per fervitium 4 militum: ' Sed debebat quinque, quando baronia erat inte-' gra.' 2. 'Guillelmus de Hommet constabularius Normanniae tenet de domino rege honorem de Hommetto per servitium 5 militum, et habet in eadem baronia 22 feoda militum ad fer-'vitium fuum proprium.' "Richard Harcourt " holds the honour of St. Salvator, from his lord " the king by the fervice of four knights; but he " was bound for five, when the barony was en-" tire. William de Hommet constable of Nor-" mandy, holds of his lord the king, the honour " of Hommet for the fervice of five knights, and " has, in the fame barony, the fees of twenty-two " knight's

'profit and lucrando pane, taking what we find at market, without inquiring whence it came.' Reliq. Spelman, p. 99-

The neglect which produced this complaint, and drew this wish from this learned knight, is still prevalent. The law in Great Britain is no where studied in its history, and as a science. The student is solicitous only to store his memory with cases and reports; and courts of justice pay more regard to authorities than to reasonings. From the moment that the Dictionary of Decisions was published in Scotland, the knowledge of the Scottish law has declined. Yet the respectable author of that compilation did not surely imagine that he was about to do a prejudice to his nation.

"knights for his own particular service." Regestrum Philip. Aug. Herouvallianum, ap. Du Gange, voc. Baronia.

[4] The terms knight and chivaler denoted both the knight of bonour and the knight of tenure : and chivalry was used to express both knighthood and knight-service. Hence, it has proceeded, that these persons and these states have been confounded. Yet the marks of their difference are fo ftrong and pointed, that one must wonder that writers should mistake them. It is not, however, mean and common compilers only who have been Sir Edward Coke, notwithstanding deceived. his diftinguishing head, is of this number. When estimating the value of the knight's fee at L. 20 per annum, he appeals to the statute de militibus, an. 1. Ed. II. and, by the fense of his illustration, he conceives, that the knights alluded to there, were the same with the possessors of knight's fees; and they, no doubt, had knight's fees; but a knight's fee might be enjoyed not only by the tenants in capite of the crown, but by the tenants of a vaffal, or by the tenants of a fub-vaffal. Now, to these the statute makes no allusion. It did not mean to annex knighthood to every land-holder in the kingdom who had a knight's fee; but to encourage arms, by requiring the tenants in capite of the crown to take to them the dignity. He thus confounds knighthood and the knight's fee. Coke on Littleton, p. 69.

If I am not deceived, Sir William Blackstone has fallen into the same mistake, and has added

to it. Speaking of the knights of honour, or the equites aureti, from the gilt spurs they wore, he thus expresses himself. 'They are also called, in our law, milites, because they formed a part, or, ' indeed, the whole of the royal army, in virtue of their feodal tenures; one condition of which was, that every one who held a knight's fee (which, ' in Henry the Second's time, amounted to L. 20 'per annum), was obliged to be knighted, and attend the king in his wars, or fine for his non-'compliance. The exertion of this prerogative, ' as an expedient to raise money, in the reign of 'Charles I. gave great offence, though warranted by law and the recent example of Queen Elizabeth: But it was, at the Restoration, together with all other military branches of the feodal 'law, abolished; and this kind of knighthood ' has, fince that time, fallen into great difrepute.' Book 1. ch. 12.

After what I have just said, and what is laid down in the text, I need hardly observe, that this learned and able writer has confounded the knight of bonour and the knight of tenure. And, that the requisition to take knighthood, was not made to every possessor of a knight's fee, but to the tenants of knight's fees held in capite of the crown, who had merely a sufficiency to maintain the dignity, and were thence disposed not to take it. See farther the notes to chapter IV. The idea that the whole force of the royal army consisted of knights of bonour, or dubbed knights, is so extraordinary a circumstance, that it might have shown,

of itself, to this eminent writer, the source of his error. Had every soldier in the seudal army received the investiture of arms? Could he wear a seal, surpass in silk and dress, use ensigns-armorial, and enjoy all the other privileges of knight-hood? But, while I hazard these remarks, my reader will observe, that, it is with the greatest deference I dissent from Sir William Blackstone, whose abilities are the object of a most general and deserved admiration.

In this note, and perhaps, in other places of this volume, I use the expression 'tenant in capit' te of the crown,' which may seem a tautology to many. The phrase, 'a tenant in capite,' may, indeed express sufficiently the royal vassal. It may, however, express a tenant in capite of a subject. And this distinction was not unknown in the law of England. Madox, Bar. Angl. p. 166. Spelm. Gloss. voc. Caput.

[5] It is natural to think, that the number of tenants in capite who gave no infeudations, could not be great. The following curious records of the age of Henry II. are proofs, however, that tenants in capite, who gave no infeudations, did actually exift; and, perhaps, they show, by implication, their uncommonness.

Carta Albani de Hairun.

Domino suo excellentissimo H. Regi Anglorum, Albanus de Hairun. Vestrae excellentiae notisico, quod ego in Hertfordscire seodum. 1. militis de veteri sesamento de vobis principaliter teneo, et quod de novo fesamento nichil habeo, nec militem feosatum aliquem habeo. Valete.

" Charter of Albany de Hairun.

"Albany de Hairun, to his most excellent so"vereign, Henry King of the English. I intimate
"to your excellency, that I posses in Hertford"shire the see of one knight, from you, on the
"old seosment, and that I hold nothing from you
"on the new seosment, nor have any knight's
"fee. Farewell."

Carta Mathaei de Gerardi Villa.

Mathaeus de Gerardi Villa tenet in capite de Domino Rege feodum. 1. militis de veteri fefamento, et nullum habet militem fefatum, nec habet aliquid de novo.

" Charter of Matthew de Gerard.

"Matthew de Gerard holds in capite, from our "lord the king, the fee of one knight, on the old "feofment, and has no knight's fee, nor any thing "else on the new one." Liber Niger Scaccari, p. 246. 247.

In the same instructive monument, there are other examples of grants in capite, of single sees; and, in general, it is to be inferred, that of such grants, there were sub-inserdations. p. 129. 130. 179.

CHAP. II.

[1] Lib. Feud. lib. 1. tit. 1. Craig, Jus Feudale, lib. 1. Spelman, voc. Feodum.

[2] An instance of the sovereign selecting the son the most agreeable to him, for enjoying the estate, occurs in England so late as the reign of Henry II. This prince gave seisine to Ralf de Mandevill of the barony of Merswude, because he was a better knight than his elder brother Robert de Mandevill. Madox, Baron. Angl. p. 97.

It is remarkable, that, among the German nations, similar principles, even in the days of Tacitus, had an influence on the rights of succession. Inter familiam, et penates, et jura successionum, equi traduntur, excipit filius, non ut cetera maximus natu, sed prout ferox bello et melior. "A-" mong the household property, and rights of suc-" cession, horses are delivered, but not like the o-

"ther articles, to the eldest son, but to him who is fierce, and best qualified for war." De Mor. Germ. c. 32-

A fingular consequence of these usages made its appearance in the law of England. On the devolution of a peerage to heirs semale, the King might select the fortunate daughter on whom to bestow it. This privilege, beautiful and interesting, was to grow out of martial customs.

[3] Beneficium, and beneficia, are frequently mentioned in the laws of the barbarians, and, from the description given of them, it is evident,

that they were subject to military service. A law of the Longobards has this passage. 'Per multas 'interpellationes sactas ad nos didicimus, milites 'beneficia sua passim distrahere.' "We learn by "many interruptions which we meet with, that "the knights are every where dividing their sees." LL. Longob. lib. 3. tit. 9. l. 9. ap. Lindenbrog. Ancient charters allude to their service, by calling them 'beneficia militaria.' Du Cange, voc. Beneficium. See also a capitulary, an. 807. It is likewise to be observed, that vassali, a seudal term, denoted, in early times, the possessor benefices. Of this there are proofs in the years 757, and 807. Du Cange, voc. Vassali.

It is commonly thought, that the word feudum was not known till about the year 884, when there is certain evidence of its use. Now, this period was, in fome countries, posterior to the perpetuity of the fief, and thus beneficium and feudum were to express the same thing. In fact, in a constitution of the Emperor Charles III. who died in the 888, beneficium and feudum are employed alternately in expressing a hereditary grant. In the year 1162, there is a charter by the Emperor Frederic I. to Raimond his nephew, giving him the perpetual grant of a county; and, in this charter, the words beneficium and feudam are also used alike to express the donation. Bruffel, Usage-general des fiefs, p. 72. 78. Even in the books of the fiefs, these terms are employed promiscuously, in the same sense.

[4] Chantereau le Fevre contends, that, under Zzij the

the Kings of France of the first and second race, there were only two kinds of landed property, the domains of the Prince, and allodiality. This notion, which is the foundation of his system, obliges him to affert, that benefices were allodium. Inserior writers have followed his fancy. For all ingenious men draw after them a train of bookmakers, who are more solicitous to defend their opinions, than to understand them.

That benefices were not propriety or allodium, has been just now said. But it may not be improper to produce express proofs of their distinction. The following laws will serve this purpose.

'Auditum habemus qualiter et comites et alii
'homines, qui nostra beneficia habere videntur,
'comparant sibi proprietates de ipso nostro beneficio,
'et faciunt servire ad ipsas proprietates servientes
'nostros de eorum beneficio, et curtes nostrae re'manent desertae, et in aliquibus locis ipsi vicinantes multa mala patiuntur.' "We have heard
"that earls and other persons who appear to hold
"of us in see, obtain to themselves proprieties out
"of our benefices, and oblige those obeying us,
"within their see, to be subject to their proprieties;
"and our courts remain deserted, and in some
"places, those in the neighbourhood suffer insi"nite mischies." Capit. Kar. et Lud. lib. 3. tit. 19.

'Audivimus, quod aliqui reddant beneficium 'nostrum ad alios homines in proprietatem, et in 'ipso placito dato pretio comparant ipsas res ite'rum sibi in alodem; quod omnino cavendum est;

' quia qui hoc faciunt, non bene custodiunt fidem,

quam

' quam nobis promissam habent. Et ne forte in ali-· qua infidelitate inveniantur, qui hoc faciunt, de-'inceps caveant se omnino a talibus, ne a propriis ' honoribus, a proprio folo, a Dei gratia et nostra, 'extorres fiant.' "We have heard that some dif-" pose of our benefices to other men in propriety, " and in the very act of fale, upon a given price, " purchase back the very same property for them-" felves in allodiality; which must be carefully " avoided. Because, those who do this, do not " observe the fealty which they came under to " us. And leaft any one who does this, be found " in an act of fraud, let them hereafter by all " means avoid fuch practices, leaft they may be " deprived of their titles, of their estates, and of " the favour of us and of God." Capit. Kar. et. Lud. lib. 3. tit. 20. ap. Lindenbrog. p. 877.

The reader may also consult and compare what is collected in Du Cange, under Alodis and Bene-

ficium.

[5] Se Chapter 1. and the Notes to it.

[6] Spelman, Littleton, Coke, Houard, Madox, Dalrymple, Blackstone, the Judges of Ireland in the case of Tenures upon the commission of desective titles, &c.

In the elaborate treatife on feuds and tenures by Sir Henry Spelman, his whole argument to show that hereditary fiefs were unknown to the Anglo-Saxons, or at least the great weight of it, rests on the idea, that the feudal incidents were consequences of the perpetuity of the fief. Yet it is observable, that this position is constantly supposed

posed, and never proved. He no where evinces, that wardship, marriage, relief, aid, and escheat, were necessary and certain results of the sief, in its condition of perpetuity; and, in the course of this work, if I do not slatter myself, I have produced evidence, from which it is to be concluded, in the clearest manner, that the seudal incidents were the attendants of the sief in all the steps of its progress.

On a foundation of mere froth, this diftinguished antiquary has erected a superstructure that is without solidity, and which the slightest effort may overthrow. Yet it is resorted to as an impregnable castle; and here, vainly secure, many a combatant has thrown down the gauntlet of defiance. If authors were not generally the unthinking copyists of each other, it might provoke laughter to consider the gravity with which an opinion is held out as irrefragable, that is in a high degree gross with absurdity, and feeble with weakness,

[7] Capitul. Reg. Franc. an. 877. ap. Baluz. tom. 2. p. 269. Abbé Mably, Observat. sur l'histoire de France, liv. 2.

[8] Du Cange, voc. Militia.

[9] Madox, Bar. Angl. p. 28. 277. 278. Houard, Anciennes loix des François, confervées dans les coutumes Angloifes, recueillies par Littleton, discours preliminaire. Craig, Jus feud. Somner, Treatife of Gavelkind. Spelm. Gloss. Hume, Hist. of England, vol. 1. Hale, Hist. of the com. law.

[10] Sir Ed. Coke. The Judges of Ireland in the case of tenures. Selden, in his titles of ho-

nour. Bacon, Discourse on the laws and government of England, &c.

[11] The use of entails, which was not unknown in the Anglo-Saxon times, and the succession which obtained in allodial estates, must have contributed very much to the establishment of the perpetuity of the sief. LL. Ælfredi, ap. Wilkins. The general tendency of the sief to this ultimate step, and the immense power of many of the Anglo-Saxon nobles, seem also to confirm the idea, that the existence of its perpetuity might, in some cases, be known in the Anglo-Saxon times. But presumptive arguments, though of great weight, are not to be entirely relied upon in questions of this sort.

There is actual evidence, that Ethelred possessed, as an hereditary sief and earldom, the territority which had constituted the kingdom of Mercland He had this grant from King Alfred, when he married his daughter Ethelsleda. Selden, Tit. hon. part 2. ch. 5. It is testissed out of records, that the earldom of Leicester was an inheritance in the days of Æthelbald; and the regular succession of its earls, for a long period, is to be pointed out. Camden, Britannia, by Gibson, vol. 1. p. 542. It is known from old historians of credit, that Deireland and Bernicia were Saxon earldoms, which were not only seudal, but inheritable. Tit. hon. part 2. ch. 5.

The grant of Cumberland by King Edmund to Malcolm King of Scotland, was also feudal and inheritable; and this appears from the Saxon chronicle.

chronicle, and from the following version of the terms employed in it. 'Eadmundus Rex totam · Cumberland praedavit et contrivit, et commenda-' vit eam Malcolmo Regi Scotiae, hoc pacto quod ' in auxilio fibi foret terra et mari.' "King Ed-" mund plundered and deftroyed all Cumberland " and delivered it to Malcolm King of Scotland. " on this condition, that he should become his " ally both by fea and land." H. Huntindon, ap. Praefat. Epifc. Derrenf. ad LL. Anglo-Sax. p. 7. The expression commendare, indeed, is said by Spelman not to mean a feudal homage. Feuds and tenures, p. 35. But the original Saxon evinces this fense; and, in fact, the word commendare, notwithstanding the authority of this learned gloffographer, is used with the utmost propriety to express a feudal homage. Commendare se alicui, was even the marked expression for faire l'hommage à un suserain. See Du Cange, voc. Commendare et Bruffel, Usage-general des fiefs, p. 35. 276.

[12] 'Volumus etiam, ac firmiter praecipimus 'et concedimus, ut omnes liberi homines totius

' monarchiae regni nostri praedicti, habeant et te-

' neant terras suas, et possessiones suas bene, et in

' pace, libere ab omni exactione injusta, et ab omni ' tallagio, ita quod nihil ab eis exigatur vel capia-

tur, nisi servitium suum liberum, quod de jure

' nobis facere debent, et facere tenentur; et prout

' ftatutum est eis, et illis a nobis datum et conces-

' fum, jure haereditario in perpetuum per com-

· mune confilium totius regni nostri praedicti.'

"We likewife will, grant, and ftrictly ordain, that

" all

"all the free men of our whole monarchy and kingdom aforefaid shall have and hold their lands, and their posessions, well, and in peace, free from every unjust exaction and from every tax, so that nothing shall be taken or demanded from them unless their free service which they we to us of right and are bound to give; and, that as it is ordained to them, and given and granted to them by us for ever, in hereditary right by the common council, of the whole of our aforesaid kingdom." LL. Guliel. c. 55.

It is to be mentioned here as somewhat remarkable, that the laws of Duke William, and especially those of them which relate to the seudal institutions, are represented by many foreign writers, and by our domestic advocates for tyranny, as the mandates or ordinances of a prince who governed by the sword. Yet they were parliamentary acts, and bear this honourable testimony in their bosom.

[13] LL. Edward. Reg. ap. Wilkins, p. 197. Chart. Guil. de leg. Edw. Regis, ap. Spelm. Cod. Leg. vet. p. 290.

[14] Spelm. Cod. Leg. vet. ap. Wilkins, p. 295. 296.

[15] LL. Henry I. ap. Wilkins, p. 233. et feq.

[16] Chart. Steph. Reg. de libertatibus, ap. Spelm. Cod. Leg. vet.

'Sciatis me concessisse, et praesenti charta mea confirmasse, omnibus baronibus et hominibus meis de Anglia omnes libertates et bonas leges quas Henricus Rex Angliae avunculus meus eis 3 A dedit

'dedit et concessit, et omnes bonas leges et bonas consuetudines eis concedo quas habuerunt tempo're Regis Edwardi.' "Know ye, that I have "granted, and by this present charter confirmed "to all my barons and men of England, the whole "liberties and good laws which Henry King of "England, my uncle, gave and granted unto "them; and I grant to them all the good laws and good usages which they possessed in the time of King Edward." p. 310.

[17] Charta libertatum Angliae Regis Henrici II. ap. Spelm. Cod. p. 318.

[18] Magna Charta Regis Johannis de libertatibus Angliae, ap. Spelm. Cod. p. 367. et seq.

Many important clauses of the great charter relate to the feudal severities. And, it is worthy of notice, that, from the slight consideration of these severities, it has proceeded, that so many writers have described the seudal institutions as a system intended and formed for oppression. Yet I have clearly shown, that these severities grew out of these institutions from the change of manners; and that the scheme of benefices or siefs was not only consistent with liberty, but sounded in it.

[19] Hume, Hift. of England, vol. 1. p. 185.

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[20] There are laws which bear the name of Edward; but it is acknowledged on every hand, that their authority is not to be fully trusted. And, in the question treated, they are not of any use, unless it be, perhaps, that they illustrate the existence of siefs among the Anglo-Saxons. This compilation

compilation, however, though posterior to the age of the Confessor, deserves to be examined with more attention than has hitherto been bestowed upon it. M. Houard, a foreign lawyer, whose acquaintance with Norman customs is more intimate than with those of the Anglo-Saxons, is the latest writer who seems to have made a study of it.

[21] The following very curious law of William the Norman makes express mention of the knight's fee and knight's fervice. It does more. It alludes to a prior law which actually established this tenure, and which was the act of William and his parliament. It is, of consequence, a decisive proof of the introduction of the knight's fee, or of knight service, by this prince, and of this only.

'Statuimus etiam et firmiter praecipimus, ut. omnes comites, et barones, et milites, et servi-'entes, et universi liberi homines totius regni nos-' tri praedicti, habeant et teneant se semper bene, ' in armis, et in equis, ut decet et oportet, et quod ' fint semper prompti et bene parati ad servitium ' fuum integrum nobis explendum, et peragendum, ' cum femper opus adfuerit, fecundum quod No-' BIS debent de feodis et tenementis suis de jure fa-' cere, et ficut illis statuimus per commune confilium totius regni nostri praedicti, et illis dedimus ' et concessimus in feodo jure haereditario.' " We "appoint alfo, and strictly ordain, that all earls, " barons, knights, fquires, and all other free men of the whole of our aforefaid kingdom, shall at 3 A ij " all

" all times have, and keep themselves well sup.

" plied with arms and horses, as is proper and ne" cessary, and that they shall always be ready and

" well prepared, for fulfilling and accomplishing

" the whole of their fervice to us, whenever a fer-

" vice occurs, according to what they are bound

" by law to perform to us for their fees and pof.

" fessions; and as we have ordained them by the

" common council of our whole aforesaid king-

"dom, and have given and granted to them in

" feudal right." LL. Guill. c. 58.

[22] 'Terras militibus ita distribuit, et eorum 'ordines ita disposuit, ut Angliae regnum lx mil-

'lia militum indefinenter haberet, ac ad imperi-

'um regis, prout ratio propoferit, celeriter exhi-

'beret.' "He distributed land to his foldiers, and

" fo arranged their different classes, that the king-

" dom of England had constantly fixty thousand

"knights at the command of the king, and whom

"he could at once muster, if occasion required." Ord. Vit. lib. 4.

Sprott, the monk of Canterbury, makes the knight-fees to amount to fixty thousand two hundred and fifteen, and of these he relates, that twenty-eight thousand one hundred and fifteen were in the hands of the clergy. Some writers have made Domesday Book agree with Ordericus Vitalis, as to the number of knight's fees. But they produce not, so far as I have observed, the passage or passages of that monument, which illustrate this opinion. And, it is difficult to con-

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ceive, that it can give a complete fatisfaction on this head or topic.

[23] Selden, Tit. hon. part 2. ch. 5. fect. 17. Madox, Baron. Anglica, p. 30.

[24] Coke, 1. Institute, sect. 1.

CHAP. III.

SECT. I.

[1] The military plan of the feudal inflitutions, or an idea of the militia created by fiefs, may be feen to the greatest advantage in that curious monument, 'the Black Book of the Exchequer;' of which it was the object to exhibit, not only a list of the feudal tenants, but of the fees and knights held and provided by them. An article from it, therefore, while it may employ the reflections of the reader, will illustrate the general notion inculcated in the text.

Carta Gervafii Paganelli.

Domino suo dilectissimo Henrico, Regi Angliae et Duci Normanniae et Aquitaniae, et Comiti Andegaviae, Gervasius Paganellus salutem.

Isti sunt milites, de quibus vobis debeo servitium.

" The Charter of Jervase Pagan.

"To his most beloved sovereign Henry King of "England,

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"England, Duke of Normandy and Aquitaine, "and Earl of Anjou, wishes health."

"These are the knights for which I owe you "fervice. *."

Petrus de Bremingeham tenet feod. IX. militum. Giffardus di Tiringeham feod. III militum. Henricus de Mohun feodum. I. militis. Ricardus Engaine feodum. I. militis. Robertus de Castreton seodum. I. militis. Paganus de Embreton feodum. I. militis. Manifelinus de Ovunges feod. duorum militum. Petrus de Stamford feodum. I. militis. Willelmus de Jetingeden feodum. I. militis. Elias de Englefeld feod. III. militum. Ricardus de Ditton feod. IIII. militum. Philipus de Hamton feod. II. militum. Willelmus de Abbenwrthe feodum. I. militis. Willelmus, filius Widonis, feod. III. militum. Bernardus de Frankelege feod. IIII. militum. Gervafius de Berneke feod. IIII. militum. Willelmus de Bello campo feod. II. militum. Willelmus de Haggaleg feod. I. m. Milo de Ringeston feodum. I. militis et dimid.

Milo de Ringeston seodum. I. militis et dimid. Willelmus Buffare seod. II. militum et dim. Robertus de Estingeton seod. I. militis. Henricus de Oilli tenebat seodum. I. militis.

Haec est summa militum, de quibus Anteces-

^{*} The detail which follows contains, to use the expression of the poet, nothing more than a muster-roll of names. We have therefore thought a translation unnecessary. T.

fores mei Antecessoribus vestris fecerunt servitium, et ego, vestri gratia, vobis, scilicet. L.

Et isti sunt milites, quibus pater meus et ego dedimus terram de dominio nostro post mortem Henrici, avi vestri, scilicet. "And this is the list of "knights for which my ancestors did service to "your ancestors, and I, by your grace, to you, "viz. sifty.

"And these are the knights for which my fa-"ther and I gave land out of our territory after

" the death of Henry your uncle, viz.

Henricus de Erdinton feodum. I. militis.

Radulfus Mansel feodum. I. militis.

Willelmus Paganellus feodum. I. militis.

Michael filius Osberti et Willelmus de Lovent. feodum dimidii militis.

Godwinus Dapifer tertiam partem. I. militis.

Walterus Mansel feodum. I. militis.

Petrus de Surcomunt feodum dimidii militis.

Galfridus de Rivilli tertiam partem. I. militis.

Liber Niger Scaccari, vol. 1. p. 139. 140. It is in this form that other vassals of the crown certify, in this work, the services and the knights they were to furnish.

[2] It was enacted by a law of Henry II. 'Ut 'quicunque habet feodum unius militis, habeat 'loricam, et cassidem, et clypeum, et lanceam.' "That every possessor of the see of one knight "shall keep a coat of mail, a helmet, a shield, "and a lance." Hoveden, an. 1181. The variations in the nature of the arms to be provided, at different periods, by vassals and soldiers, are learnedly

learnedly explained in an author whom the adorers of tyranny affect to despise, in the manly and spirited work of Nathaniel Bacon, on the laws and government of England.

[3] 'In universum aestimanti plus penes pedi-'tem roboris.' "They universally preser the "strength of infantry." Tacit. de Mor. Germ. c. 6.

[4] Many writers have observed, that it was William the Norman who introduced archers into England. But they were known in the Anglo-Saxon armies. A law of Alfred has these words, 'Si quis alteri digitum unde saggittatur absciderit, 'xv sol. comp.' "If any one shall cut that singer of "another employed in archery, he shall compound "for sifteen shillings." See LL. Alfr. c. 40. as interpreted by Lindenbrog. in his Glos. p. 1389. Archery was also of high antiquity in the other states of Europe. See LL. Sal. tit. 31. l. 6. LL. Ripuar. tit. 5. l. 7. The English were to excel all nations in the use of the bow, and for far shooting. It was the archers who gained the battles of Cressy, Poictiers, and Agincourt.

'King Edwarde the third,' fays Ascham, 'at 'the battaile of Cressie, against Philip the French

'King, as Gaguinus the French historiographer

' plainlye doth tell, slewe that day all the nobili-

' tye of Fraunce onlye with his archers.

'Such like battaile also fought the Prince Ed-

' warde beside Poicters, where Johne the French

'Kinge, with his sonne, and in a manner all the

' peres of Fraunce, were taken, besides thirty thou-

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fand which that days were flaine, and very few

· Englishmen, by reason of theyr bowes.

'Kinge Henrye the Fifte, a prince perelesse, and most victorious conqueror of all that ever dyed yet in this parte of the world, at the battle of Agincourt, with seven thousand sightings men, and yet many of them sicke, being such archers, as the chronicle sayth, that most parte of them drewe a yarde, slewe all the chivalrye of Fraunce, to the number of forty thousand and mo, and lost not past twenty-six Englishmen.' Toxophilus, or the Schole of Shooting, p. 112.

[5] 'He,' says Littleton, 'which holdeth by the service of one knight's fee, ought to be with the King forety dayes, well and conveniently 'arrayed for the warre.' Tenures, book 2. chap. 3. See farther Du Cange, voc. Feudum militaire. Spelman, voc. Feudum Hauberticum, et Assifes de Jerusalem, avec des notes, par Thaumassire, p. 266.

[6] Brussel, Usage-general des fiess, vol. 1. p. 164. 168. Daniel, hist. de la milice Françoise, liv. 3.

In England, in the time of Edward III. his army in France, Normandy, and before Calais, besides the Lords, confifted of thirty-one thousand two hundred and ninety-four combatants and attendants; and their pay for one year and one hundred and thirty-one days amounted to 1272011.

2s. 9d. The following specification of particulars will furnish an idea of the military pay and service of those times.

'To Edward Prince of Wales, being in the king's fervice in Normandy, France, and before 3 B Calais.

- 'Calais, with his retinue, for his wages of war,
 '20s. a day. Eleven banerets, every one taking
- 4s. a day. One hundred and two knights, each
- * 28. a day. Two hundred and fixty-four escuires,
- 'each 12 d. a day. Three hundred and eighty-
- ' four archers on horseback, each 6d. a day. Six-
- ' ty-nine foot archers, each 3d. a day. Five hun-
- ' dred and thirteen Welshmen, whereof one chap-
- · lain, at 6d. a day. One physician, one herald
- or cryer, five enfigns, twenty-five ferjeants or
- ' officers over twenty men, each 4d. a day. Four
- ' hundred and eighty footmen, each 2d. a day.
 - 'To Henry Earle of Lancaster, being in the
- ' king's fervice before Calais, with his retinue, for
- ' his wages of war, and one other Earle, each 6s.
- '8d. a day. Eleven banerets, each 4s. a day.
- 'One hundred and ninety-three knights, each 28.
- ' a day. Five hundred and twelve escuires, each
- '12d. a day. Forty-fix men at armes, and fix
- ' hundred and twelve archers on horfeback, each
- 6d. a day.
- 'To William Bohun, Earle of Northampton,

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- ' being in the King's service in Normandy, France,
- ' and before Calais, two banerets, forty-fix knights,
- one hundred and twelve escuires, one hundred
- ' and forty-one archers on horseback. For their
- wages as above.
 - 'To Thomas Hatfield bishop of Durham, 6s.
- '8d. Three banerets, forty-eight knights, one
- ' hundred and fixty-four escuires, eighty-one arch-
- 'ers on horseback, every one taking as above.
 - To Ralf Baron of Stafford, being in the King's

fervice in the places aforesaid, with two banerets,

* twenty knights, ninety-two escuires, ninety arch-

ers on horseback. Every one taking as above.

These things appear in a cotemporary record, published by Dr. Brady in his history of England. See vol. 2. Appendix, p. 88.

SECT. II.

[1] In rolls of the militia of France in the year 1236, and preceding that period, which were observed by *Pere Daniel*, there were entered military tenants who were marked down for the fervice of five days, and for other proportions of the ordinary fervice of forty days. And these are proofs, not only of fees in France, but of the fractions of fees. *Milice*, *Françoise*, p. 55.

This learned author, indeed, not attending to the regulations which made the fractions of a fee give their proportion of the ordinary fervice, has endeavoured to account for the limited numbers of days which many tenants were bound to ferve by refined reasonings and conjectures; which show how acutely, and yet how absurdly, a man of ability may employ himself in searching out the truth*.

3 B ij Littleton,

* 'Pour ce qui est de ceux que l'on voit dans les roles 'n'être obligez qu'à cinq, qu'a quinze, ou vingt cinq jours, 'ce furent des concessions particulieris, dont il est dissicle de 'conjecturer la cause; ce sut pour quelque service signalé rendu a l'etat, ou peut-être que leurs ancêtres durant les guerres civiles soumirent au Roi leurs chateaux, ou leurs

terras

Littleton, having remarked that the ordinary fervice of the knight's see was forty days, is careful to add, 'that he, which holdeth his land by the moitie of a knight's fee, ought to be with the King twenty days; and that he which holdeth his land by the fourth part of a knight's fee, ought to be with the King ten days; and fo he that hath more, more; and he that hath 'lesse, lesse.' Tenures, p. 69.

terres à cette condition, ou qu'ils avoient quelque autre obligation qui supléoit au service ordinaire; comme, par exemple, de faire la garde en certains lieux lorsque l'enemi approchoit. On' voit en effet dans ces roles quelques gentilshommes siessez, obligez seulement à faire le guet en certaines occasions dans quiques forteresses.

'Une autre raison peut avoir contribué à la reduction du service à un terme plus court qu'il n'etoit autresois: C'est que sous la premiere race, et sort avant sous la seconde l'empire François etoit beaucoup plus étendu que sous la troisse me. Il falloit aller chercher les ennemis et les rebeelles dans la Germanie, et au delà; il falloit passer les Alpes, ou les Pyrenées, et entrer bien avant en Italie et en Espagne; Par consequent les expeditions duroient beaucoup plus longtems que sous la troisseme race, sous la quelle le royaume avoit des bornes beaucoup plus étroites.'

"For those whom we see on the rolls only, to be obliged to five, fifteen, or twenty-five days, these were particular concessions of which it is difficult to conjecture the cause; it was for some signal service rendered the state, or perhaps that their ancestors, during the civil wars. Submitted their castles or their lands to the king, on that condition, or that they had some other obligation which supplied the ordinary fervice; as, for example, to keep guard in certain places when the enemy approached. We see in fact, in these rolls, fome siefed gentlemen obliged only to keep guard on certain occasions in some fortresses.

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In a roll, de l'ost de Foix, in the year 1272, there are the following explicit proofs of the fractions of fees, and of the limited fervice that was to be given for them.

Gaufridus de Baudreville, praesentavit servitium suum per xx dies pro dimidio seodo. "Godfrey de Baudreville, presented his service for twenty days for half a see."

Johannes Morant dicit, quod debet servitium quarti unius militis. "John Morant said, that he "owed a service of one sourth part of a knight." Johannes

"An other reason may have contributed to the reduction of the service, to a shorter term than it was formerly: It is that under the first race, and well into the second, the French empire was much more extended than under the third. It was necessary to go and seek the enemies and rebels in Germany and beyond it; to pass the Alps, or the Pyresenees, and enter pretty far into Italy and Spain; consequently the expeditions lasted much longer than under the third race, under which the kingdom had much narrower bounds." Liv. 3. ch. 2.

The wildness of these conjectures does not require to be pointed out minutely, as it will appear from a comparison of the text with this note. Yet I censure not the abilities of this historian. If we could reach the truth in all sciences, we should find, that it is the greatest men who have wandered oftenest. The philosopher, who states sentiments of his own, must necessarily be mistaken at times, and is often to reason hypothetically. The author who would catch the general sense and opinions of the world, has no title to travel out of the right path; and, if his errors are frequent, he deserves to be contemptible. It is not so with the wanderings of the inventive and resecting mind. Though they merit not approbation, they call for respect. The absurdities of the prosound are the results of thought and of courage; those of the shallow are the fruits of mere weakness.

Johannes de Falesia Scutifer dicit, quod tenet dimidium feodum loricae, pro quo debet, ficut dicit, auxilium exercitus et calvacatae quando per Normanniam levatur, aut fervitium per xx dies eundo et redeundo; et si servitium dictorum xx dierum captum fuerit, auxilium praedictum non debet capi nec levari. " John de Falese, Esquire. " faid, that he held one half of a fee, for which he owed, as he faid, the aid of the army-fervice " when it should be levied in Normandy, or a fer-" vice of twenty days, going and returning; and " if the fervice of the faid twenty days should be " taken, that then the aforefaid military fervice " ought not to be taken or levied." Bruffel, Usagegeneral des fiefs, p. 174.

In England, the fractions of fiefs are to be proved by almost every article in the Black Book of the Exchequer, and by a multitude of records in Madox; and to these authorities I refer the inqui-

fitive reader.

[2] Du Cange, voc. Membrum Loricae. Craig Jus Feudale, lib. 1. Assises de Jerusalem, avec des Notes, par Thaumassiere, p. 104.

[3] Cowel, Interpreter, voc. Fee Ferm. Spelm. voc. Feodi Firma. Du Cange, voc. Feudi Firma.

[4] See what is faid by Mr. Baron Dalrymple, in the mafterly sketch he has given of the history of the alienation of land, in his comprehensive and learned treatife concerning feudal property in Great Britain.

[5] Littleton, Tenures, fect. 96. Daniel, Hift. de la malice Françoise, liv. 3.

[6] In the strictness of the feudal regulations, the estate of the vassal might be forfeited for his neglect of service. But, in general, it seemed equitable, that a fine only should punish his disobedience. Brussel, tome 1. Assists de Jerusalem, avec des notes, par Thaumassiere, p. 267. Etablissemens de S. Louis, liv. 1.

In England, in the Anglo-Saxon times, the forfeiture of the benefice or a fine, as in the other countries of Europe, was the punishment of the refractory vassal. The case was the same in the Norman period of our history. When the King's summons ad babendum servitium, was issued, it was expected that it would be complied with. The following sines and forfeitures for neglect of service are from records.

. The Abbot of Pershore was amerced, for not ' fending his knights to ferve in the army of Ca-' marun, as he was warned to do. William de ' Haftinges fined in c marks, that he might have ' the king's favour, because he did not march at ' the king's fummonfe in the army of Normandy. ' William, bishop of Winchester, fined, or was a-' merced in c marks, because he was not in the 'army of Gannock, nor had his fervice there. 'Matthew Turpin was diffeifed of his land and ' ferjeantry in Winterlaw, because he was not in the 'king's fervice beyond fea. Duncan de Lascels was diffeifed of three knight's fees and a half, because he was not with the king in his army of ' Scotland, with horses and arms. Roger de Cra-" mavill was diffeifed of his land, because he did · not

* Malgar de Vavasur was diffeised of his land, be-

* cause he neither went with the king into Ire-

'land, nor made fine for the voyage.' Madox, Hist. of the Exchequer, vol. 1. p. 662. 663. See farther Baron. Anglic. book 1. ch. 3.

[7] Littleton, tenures, sect. 95. Du Cange,

Gloff. voc. Scutagium.

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[8] Daniel, Milice Françoise, liv. 3. Du Cange, voc. Coterelli, Brabanciones, Brabantini. Hume, Hist. vol. 1. p. 308.

In France, it is said, that mercenaries were not employed in considerable numbers, till the reign of Philip the August. In England, it is thought, they were first known under Henry II. From the causes I mention, it is probable, that their use must have been familiar, and even extensive in both countries, in earlier times.

[9] Baronia Anglica, book 1. chap. 6. Daniel, Milice Françoife, liv. 3.

[10] 'The religious,' fays Madox, 'infifted that' they held all their lands and tenements in frank-

almoigne, and not by knight fervice. This al-

· legation was used with success by the abbot of

· Leycester, the priour of Novel-lieu without Staun-

' ford, and the abbot of Pippewell.' He cites the records which prove these frauds; and, in another place, appealing also to records, he has these words. 'The abbot of St. Austin had a great suc-

· cess in defrauding the king of his services. The

· abbot, it feems, had been feoffed to hold by the

' fervice of fifteen knights. Of these fifteen, he

* found means to conceal twelve, and answered to the king with three only.' Baron. Angl. p. 109.

[11] A record of Henry III. fays of Richard Crokel, 'Faciet fervitium tricesimae partis feodi 'j militis.' "He shall give the service of the thir-"tieth part of one knight's fee." A record of the same prince, says of John Hereberd, 'Faciet servitium sexagesimae partis unius feodi.' "He "shall give the service of the sixtieth part of one "fee." Hist. of the Exchequer, vol. 1. p. 650. 651. A variety of instances, to the same purpose, are to be collected.

On the supposition that the fractions of a fee beyond the eight parts, were not properly its members, the demands of service for the thirtieth and the sixtieth parts of a fee, must have been encroachments and severities, against the usual practice and usages of siefs. If service, however, was required for such fractions, the affessment of a scutage on the tenants of knight-service would necessarily subject them in their proportion of payments. And the difficulties attending either the exaction of these services, or these payments, must have been infinite.

It is to be confessed, that the giving the thirtieth or the fixtieth part of the service of forty days, which was the usual term of the service of the military tenants, has a strange aspect. Perhaps the grants I mention were not regulated by the usual rules which directed sees. It is well known, that there were tenants in knight-service

who were bound to give, not the usual service of forty days, but the attendance of themselves and their knights, both at home and abroad, at all times, and wherever it should be demanded. Even in this view, however, it is difficult to comprehended the regulations which must have governed the fractions of such sees.

But there were also vassals in knight-service whose stipulated time in the field and in expeditions was fixty days. See Etablissemens de S. Louis, p. 23. There might thus, by the agreement of superiors and tenants, be stipulated services for one hundred, two hundred, or any definite number of days whatever. On this principle, it is easy to account for the fractions of sees which gave fervice for the thirtieth, the sixtieth, or any such proportions of a see. In this state of the matter, however, the fractions I speak of in the text, though not of the common usage of sies, must have been members of the see.

In the introduction to the History of Charles the Fifth, in the View of the Progress of Society in Europe, from the subversion of the Roman Empire, to the beginning of the sixteenth century, of which the scheme is so comprehensive, it is remarkable, that, amidst a wide variety of other omissions, there is not even the slightest consideration of knight service and the knight's fee. Yet these circumstances were of a most powerful operation, both with respect to government and manners. I make not this remark to detract from the diligence of an author whose laboriousness is acknowledged,

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and whose total abstinence from all ideas and inventions of his own, permitted him to carry an undivided attention to other men's thoughts and speculations; but that, resting on these peculiarities, I may draw from them this general and humiliating, yet, I hope, not unuseful conclusion, that the study and knowledge of the dark ages are still in their infancy. Are we for ever to revel in the sweets of ancient lore? And are we never to dig up the riches of the middle times?

CHAP. IV.

[1] Among the disbursements from the exchequer of the kings of England, there seems to have been much for the behoof of the knights of honour, whom they retained. This appears from a variety of records in Madox, and accounts for the high charges of the sherifs for palfreys, saddles, gilt-spurs, peacocks crests, silk toises, robes, gloves, steel caps, swords, and lances. Hist. of the Exchequer, ch. 10.

A pension of L.40 per annum was given by Edward III. to John Atte Lee, who had been invested with knighthood in auxilium status sui manutenendi; and that Sir Nele Loring might better maintain the honour of knighthood, he granted to him, and his heirs male, L.20 per annum. An annuity of forty marks was given to Sir John Walsh, by Richard II. to enable him to support this dignity. And other examples to this purpose are to be collected. Assemble on the Garter, p. 34.

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See farther Du Cange, voc. Milites Regis, et Differt. 5. fur l'Histoire de St. Louis.

[2] Information concerning the knights retained by the nobles, is not to be found in that abundance which might be expected. In an account of the household expence of Thomas Earl of Leicester an. 1313, there are charged seventy pieces of blue cloth for his knights, and twentyeight for the esquires; seven furs of powdered ermin, feven hoods of purple, three hundred and ninety-five furs of budge for the liveries of barons, knights, and clerks; fixty-five faffron-coloured cloths for the barons and knights; and one hundred pieces of green filk for the knights. In this account, there is also a charge of L. 633: 15:5, as fees to earls, barons, knights, and efquires. Sotw, Survey of London, in Strype's edition, vol. 1. p. 243. The total expenditure of the Earl of Leicester for one year, which was 7309, is valued by Mr. Anderson, at L. 21,927 of our money; and from the difference of living, or of the efficacy of money, his expence is made to be equal to L. 103,633. Anderson, Hist. of Commerce, vol. 1. p. 153. A board for the knights was one of the establishments of the fifth Earl of Northumberland. Household-book, p. 310. See farther St. Palaye, tome 1. p. 312. 364,

[3] 'In the nineteenth year of King Henry III.' fays Madox, 'all the sherifs of England were com*manded by close writs of the great seal, to make

*proclamation in their respective counties, that
*all they who held of the king in chief, one knight's

* fee or more, and were not yet knighted, should

*take

* take arms and get themselves knighted, before * the next Christmas, as they loved the tenements

or fees which they held of the king.' Baron. Angl. p. 130. Proclamations of this kind were frequent.

[4] The writs to take knighthood expressed often, in their bosoms, the single knight's see, as the estate entitling to knighthood; and they are useful as ascertaining, at different times, the value of the knight's see. Thus, there are rolls of different dates which state the knight's see at sisteen, twenty, thirty, forty, and sifty pounds of yearly valuation. A specification of such records may be seen in Ashmole, p. 33. and Coke, 11. Institute, p. 597. And, it is to be wished, that some intelligent person, who has access to the public offices, would publish a series of them. From such a work ingenious men might derive many advantages.

It is not to be conceived, that the knight's fee which was held of a subject, could entitle to knighthood; and yet many learned writers have expressed themselves to this purpose. It was the knight's fee in capite, or of the crown. This is illustrated by the writs of summons to take knighthood. And, of this writ, the record which sollows, is an example, in the usual, or regular form.

Rex Vicecomiti Norf. et Suff. falutem. Praecipimus tibi, quod, visis literis istis, per totam balivam clamari facias quod omnes illi qui de nobis tenent in CAPITE feudum unius militis, vel plus, et milites non sunt, citra festum natalis Domini an-

no regni nostri decimo nono, arma capiant et se milites sieri faciant, sicut tenementa sua quae de nobis tenent diligunt. "The king, to the sheriss" of Norfolk and Suffolk, health. We command "you that these our letters seen, you make a pro"clamation through the whole of your jurisdic"tion, that all those who hold of us in capite, the "fee of one knight or more, and are not knights, "shall take arms and assume the order of knight"hood, before Christmass, in the nineteeth year "of our reign, as they value the possessions which "they hold of us." Claus. 19. H. 3. m. 25. dorso. ap. Madox, Hist. of the Exchequer, vol. 1. p. 510.

[5] In the reign of Henry III. the honour of Dudley, and other lands of Roger de Sumery, were taken into the king's possession, with all the chattels found on them; because Roger did not come to be girt with the belt of knighthood. Bar. Angl. p. 131. For the same reason, the same prince seized the estates of Gilbert de Sampford and William de Montagu. And, in the twentieth year of Edward I. the sheriss of such persons as did not appear to take knighthood, and to answer at the exchequer for the issues of them. Hist. of the Exchequer, vol. 1. p. 510.

The neglect of the sheriffs to distrain the lands of those who were entitled to knighthood, and refused it, was often to subject them in amerciaments and punishments. And, what is remarkable, it appears that the command of the king's writ to his officers was at times accompanied with

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much feverity, in case they should be negligent of their duty, or be tempted to connivance by bribes. This is illustrated by the evidence of the following writ to the sheriff of Northamptonshire.

Rex Vicecom, North. falutem. Praecipimus tibì quod, ficut teipfum et omnia tua diligis, omnes illos in baliva tua, qui habeant viginti libratas terrae, diftringas, quod se milites faciendos curent, citra nativitatem Sancti Johannis Baptistae proxime futur. Sciturus pro certo, quod fi, pro munere, vel aliqua occasione, aliquam relaxationem eis feceris, vel aliquem respectum dederis, nos ita graviter ad te capiemus, quod omnibus diebus vitae fuae te fenties esse gravatum. " The "king, to the sheriff of Northamptonshire, health. "We command you, that as you love yourfelf " and all yours, you compel all those within your " jurisdiction who have twenty pound of land, " that they take care to enter themselves as knights " by the next nativity of St. John the Baptift. " And know you, for certain, that if for a prefent, " or on any other account you grant them any in-"dulgence, or give them any respect, we shall " take it so much amis, with respect to you, that " you shall feel the effects of it during every day " of your life. Given at Windfor, the fourteenth "day of April." T. R. apud Wyndefor decimo quarto die Aprilis. Clauf. 28. H. 3. m. 12. dorfo. ap. Ashmole, p. 33. See also Coke, 11. Inft. p. 596.

Thus, by a strange fate, chivalry was to grow into an imposition and a tax. It is a wild circumstance, and shows the unfortunate counsels, and

the perverse humour of Charles I. that this unamiable method of raising money was revived in his reign. An act of tyrannical insolence was thus founded upon the pretext of an ancient custom. Charles lived to abolish the oppression he had revived, and to ordain, that no person whatever should be compelled to take the order of knighthood, or to undergo any fine or trouble for not having taken it. Stat. Car. I. an. 1640, cap. 20.

[6] In the reign of Henry III. Bartholomew Fitz-William gave v marks to have respite for taking knighthood; and Thomas de Moleton, and several others, gave fines on the same account. Hist. of the Excheq. vol. 1. p. 509. In the same reign, Robert de Menevil paid v marks for a respite of knighthood for two years; and Peter Fouden 48 shillings and 8 pence for the respite of three years. And, for a suspension from knighthood for the same period, John de Drokensford, in the days of Edward III. paid ten pounds. Astronomole, p. 33.

The refusing to take knighthood, when not punished by the seizure of the land, was subjected to fines and amerciaments, which seem to have been arbitrary. In the time of Edward III. William, the son of Gilbert de Alton, paid twenty shillings for not appearing and receiving knighthood, according to the command of the King's proclamation; and the sine of forty shillings was set upon Simon de Bradeney, Thomas Trivet, and John de Neirvote. In the days of Henry IV. Thomas Pauncesoot paid sour nobles for this neglect

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glect or contempt. Ashmole, p. 34. See farther Baron. Angl. p. 131. 132. Camden, Introd. to the Britan. p. 246. 247.

CHAP. V.

SECT. II.

[1] 'FIT interdum,' fays the old dialogue concerning the exchequer, 'ut imminente vel infur-' gente in regnum hostium machinatione, decernat ' rex de fingulis feodis militum fummam aliquam ' folvi, marcam scilicet, vel libram unam; unde ' militibus stipendia vel donativa succedant. Mavult enim princeps stipendiarios, quam domesticos bellicis apponere cafibus. Haec itaque fum-' ma, quia nomine scutorum solvitur, scutagium 'nuncupatur.' " It fometimes happens that when " the defigns of an enemy are rifing in, or invad-" ing the kingdom, that the king ordains a cer-" tain fum to be paid out of every knight's fee, " a mark, for example, or a pound, out of which " wages, or donatives, may be supplied for the " foldiers, because the king chooses rather to em-" ploy hired troops than his vasfals in the event of "a war. This fum, as it is paid in the name of " defence, is called scutage." Dial. de Scaccar. lib. I. fect. 9.

It was according to the number of their fees that the barons and tenants in capite were charged with fcutage. Each knight's fee paid a determined fum to the King. And, as the vaffals of the 3 D crown

crown were charged with the full payments for their fees, they had recourse for compensation to their knights, from whom they claimed a scutage in proportion to the fees held and possessed by each. The king applied to his vassals, and his vassals applied to their tenants.

[2] It is commonly conceived, on the authority of Alexander de Swereford, an accurate observer of records, that, in England, there was no fcutage or tax on knight-fees before the reign of Henry II. There is great probability, however, that the scutage preceded the age of this prince. It is to be thought that it was coeval with the use of mercenaries; but the period of the introduction of these is not, I believe, to be ascertained with precision.

In the second year of the reign of Henry II. there was a scutage for the army of Wales. It was assessed only on the prelates who held their lands in knight-service. They paid at the rate of xxs. for each knight's see. There was, in the sifth year of the same reign, a second scutage for the army of Wales; and it was assessed not only on the prelates, but on all the tenants by knight-service indiscriminately. They paid two marks for each knight's see. In the thirty-third year of the same prince, there was a scutage for the army of Galway. It was xxs. per see. Under Richard I. a scutage for Wales was assessed at cs. per see. Madox, bist. of the Excheq. vol. 1. p. 620. et seq.

I know that the first mode of taxation in England was not the tax on knight's fees, of which I ul

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now speak. In the Anglo-Saxan times, Danegeld was an imposition on the landed property of England; and it was established with the consent of the people in the wittenagemot or national council. The earlier Norman princes appear also to have levied this tribute; but, in doing so, they probably exercised an illegal stretch of prerogative.

It was as mercenaries came to be employed, and as the spirit of the seudal institutions declined, that the scutage, or the tax on knight-sees, was to prevail. To this tax the Magna Charta gave a blow, which, in time, was to be decisive. The grant of money by the people succeeded to it. Subsidies, tenths, and sifteenths, were adopted, and continued long. The tax of Danegeld was only intended as a temporary expedient. The scutage led the way to a regular, a constant, and a formal method of taxation.

[3] Kennet, Collection of English Historians. Madox, Hist. of the Exchequer. Hume, History of England.

[4] It is an important circumstance, that the free gifts of cities and towns should have grown into taxes. In France, in the year 1231, the burgesses of St. Omer paid to St. Louis the sum of 1500 livres; and this payment was called a donum; a proof that it was not exigible as a duty. It is likewise evident, that, in France, such presents had been common, and had grown into taxes. Brussel, Usage-general des Fiefs, liv. 2.

In England, it is clear, from a variety of records produced or appealed to in Madox, that the word donum must also have been used to express gifts that were free. Hist. of the Excheq. ch. 17. After mercenaries were known, these gifts ceased to be free, and were termed tallages. And of tallages, both in England and France, there are frequent examples in the books I have just cited. See farther Du Cange, voc. Donum.

As Kings received gifts which they were to convert into tallages, so the lords and superiors, who were honoured with similar presents, did not fail to change them also into taxes or customs, Du Cange, voc. Talliare.

What is curious in a peculiar degree, the diftant fource of these usages, and the spirit of them too, while manners retained their simplicity, may be seen in the following words of Tacitus, of which this note may serve as an illustration. 'Mos est 'civitatibus ultro et viritim conferre principibus 'vel armentorum vel frugum, quod pro honore 'acceptum, etiam necessitatibus subvenit.' "It is "the custom of the states, of their own accord, man "by man, to confer upon their chiefs presents of "cattle and of corn, which are accepted as an "honour, but are likewise convenient for their "fubsistence." De Mor. Germ. c. 15.

A distinction of great moment, as to civil liberty, deserves here to be remarked. During the pure times of the Gothic manners, the towns and boroughs made gifts at their own pleasure. When these manners were altered, they were tallaged at the pleasure of the crown and the barons. The former times were times of liberty; the latter of oppression.

When Dr. Brady, therefore, Mr. Hume, and a multitude of writers, enlarge on the low and infignificant state of the towns, and, treating their inhabitants as little better than flaves, infer thence. the original despotism of our government, they are only active to betray their inattention. It is ftrange, that men of genius and talents, should take so lame a survey of this subject. Of the two flates or conditions of fociety which prevailed, they have no conception. They knew only the history of towns in their last situation, and could not perceive that the oppressions they saw had only a reference to the change of manners, and the breaking down of the feudal fystem, which affected, indeed, the administrations of princes. and the conduct of the nobles to their vaffals, but did not alter the established form of our government.

From the Magna Charta, these authors presume to date the commencement of our liberty; while that monument is a proof, the most indubitable, of the encroachments which had been made upon liberty; fince it was its great purpose to destroy them.

[5] 'Nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, et ad primogenitum silium nostrum militem faciendum, et ad siliam nostram primogenitam semel mari-

tandam:

* tandam; et ad hoc non fiet nisi rationabile auxi-'lium.' "No scutage or aid is to be laid in one

"kingdom unless by the common council of the

" kingdom, unless for redeeming our person, for

" making our eldest son a knight, or for the mar-

" riage of our eldest daughter; and for this there

" shall not be more than a reasonable aid." Mag-

na Charta, Reg. Joan. ap. Spelm. Cod. vet. p. 369. The fcutagium was the tax on lands held in knight-fervice. The auxilium was any tax what-

ever. I am sensible, that, after the Magna Charta, there are inflances of taxes which were levied without the concurrence of the great council of the nation; but these were violations of the conflitution, and of liberty. For, from that period the legal method of affifting government was by a parliamentary fubfidy or affefiment. The violent exactions of feveral princes, posterior to the Magna Charta, are, indeed, held out, by many authors, as descriptive of the despotism of our government. But of fuch authors, it is to be faid, that they cannot diftinguish our conflitution from the administrations of our princes. The madness or the folly of a King may disfigure our government by wild, encroaching, and unhappy exertions; but from these we must infer nothing against those principles of liberty upon which it is founded.

[6] ' Simili modo fiat de auxiliis de civitate Londinenfi. Et civitas Londinenfis habeat omones antiquas libertates, et liberas consuetudines fuas, tam per terras quam per aquas. Praeeterea volumus et concedimus, quod omnes aliae · civitates, et burgi, et villae et barones de qinque portubus, et omnes portus habeant omnes · libertates et omnes liberas consuetudines suas, et ad ' habendum commune confilium regni de auxiliis af-'fidendis.' "It shall be in the same manner re-" fpecting the aids from the city of London. The "city shall possess all its ancient liberties, and all " its privileges, both by land, and by water. Befides " we will, and grant, that all the other cities and " burghs, and villages, and the barons of the " cinque ports, and all other ports, shall enjoy all "their liberties and privileges, and likewife shall " enjoy a common voice in affeffing the aids of " the kingdom." Mag. Chart. ap. Spelm. Cod. vet. p. 369.

The Magna Charta was explanatory of the ancient law and custom as well as correctory of abuses and tyranny. It is to be regretted, that, not-withstanding all which has been written concerning this invaluable record, there should yet, at this late hour, be desiderated a complete illustration of it. Much, I know, has already been executed towards this end; but, if I am not greatly deceived, there remains still more to be done. And this, I imagine, will appear clearly to the philosophical reader, who will attend to it, in its connection with history, law, and manners.

SECT. II.

[1] BRUSSEL, Usage-general des Fiefs, liv. 2. ch. 6. Bacon, Discourse on the Government of England, part 1. p. 141. 264.

[2] Daniel, Milice Françoise, liv. 4. Hume, History of England, vol. 2. p. 85. Barrington, Observations on the more ancient statutes, p. 379.

[3] Bacon, Discourse on the Government of England, part. 1. ch. 63. 71. Lord Lyttelton,

Hift. of Henry II. vol. 3. p. 354.

[4] Pere Daniel mentions an array in France in the 1302, which called out ' tous les François 'nobles, et non nobles, de quelque condition ' qu'ils soient, qui auront âge de 18 ans et plus, ' jusqu' á l'âge de 60 ans.' He adds, ' Ce n'est ' pas á dire pour cela que tous marchassent en ef-' fet : Mais ceux que le roi commettoit pour faire ces levées, prenoient de chaque ville, et de cha-' que bourg et village le nombre d'hommes, et tel-'les hommes qu'ils jugeoient à propos en ces oc-'cafions.' "All the French, noble or not noble, " of what condition foever, from the age of eigh-" teen to fixty." He adds, " It is not to fay from " this, that all should march in effect; but those " whom the king commissioned to make these le-"vies, took from each city, and from each bo-" rough or village the number of men, and fuch " men as they thought proper on these occasions." Hist. de la Milice Françoise, vol. 1. p. 57.

In England, 'in the fixteenth year of King 'Edward

Edward II. a commission issued out of the ex-* chequer to Geoffrey de St. Quyntyn and John de Kasthorp, ordering them to raise speedily, in every town and place in the wapentake of Dyk-'eryng, as well within the franchifes as without, all the defenfible men that were between the age of fixteen and fixty, as well of gentz d'armes as of foot, each man being duly arrray-'ed, according to his estate, and to put the faid ' men in array by hundreds and twenties, and be-' ing fo arrayed, to lead them to the King at York, by fuch a day, to act against the Scots. The blike commissions issued out of the exchequer, to ' John de Belkthorp and Geoffrey Stull, for the wapentake of Buckros, and to other persons, for ' other wapentakes.' Madox, Hist. of the Excheq. vol. 2. p. 111.

An example of an array, in the reign of Edward I. is also remarked by Mr. Madox, and it proceeded on writs from that prince to all the sheriffs of England*. It has been thought, that King John's reign afforded the first instance of an array. But I think it highly probable, that arrays were prior to his age. Mr. Hume had met with no commission of array till the reign of Henry

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^{*} In his writ to each sheriff, after having ordered the array, and expressed his meaning, he subjoins these words. 'Et hoc, sicut indignationem nostram vitare et te indempnem servare volueris, nullatenus omittas.' "And this ye must by no means omit, as ye wish to avoid our indignation, and fave yourself from punishment." Hist. of the Exchequer, vol. 2. p. 104.

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V. and this circumstance could not fail of leading him into mistakes. Hist. of England, vol. 2. p. 321.

Arrays for failors were practifed after the fame method as for foldiers. The custom is still retained in the pressing of seamen. It is somewhat remarkable, that this illegal power is yet suffered to remain with the crown. If exerted as to soldiers, it would seem the highest tyranny. In apology for it, authors have said, that it is difficult to discover an expedient to answer its purposes, without greater danger to liberty.

[5] Daniel, Hift. de la Milice Françoise, liv. 3. ch. 8. Hume, Hift. of England, vol. 2. p. 224. Barrington, Observations on the more ancient

Statutes, p. 378. 380.

I am disposed to believe, that it was chiefly the enormous dissoluteness and irregularity of manners introduced by the mercenaries, which deformed England so much in the reign of Edward I. that the ordinary judges were thought unable to execute the laws. This, it would seem, made Edward invent a new tribunal of justice, which had power to traverse the kingdom, and to inslict discretionary punishments on offenders. Spelman. Gloss. Vec. Trailbaston. Yet a court so inquisitorial was a daring insult to a free nation, and infinitely a greater calamity, than all the disorders which prevailed. That country is miserable where the discretion of a judge is the law.

[6] Daniel, Hist. de la Milice Françoise, liv. 4. The archers were called frank, because they were

free from taxes.

[7] 3. Institute, p. 85. 87. Barrington on the more ancient Statutes, p. 379. 380.

[8] Bacon, Discourse on the Government of England, part 1. p. 187. part 2. p. 60.

[0] 2. Institute, p. 3.

[10] Parl. an. 1. Hen. IV. de Deposit. Reg.

Ricardi II. ap. Dec. Script. p. 2748.

[11] Sir John Fortescue, who resided some time in France with Prince Edward, the son of Henry VI. and who wrote there his excellent treatise, 'De Laudibus Legum Angliae,' describes, from actual knowledge, the exorbitant insolence of the French soldiery, and the miserable condition of the people. The picture he draws is too long for insertion in this place. But, though the seatures are strong, there is no reason to suspect the likeness. A native of Great Britain, in attending to it, must feel, in a lively degree, the happy advantages of our free constitution.

[12] 12. Charles II. cap. 24.

CHAP. VI.

[1] Tacitus alludes to the historic songs of the old Germans, of which it was doubtless the purpose to record the migrations of tribes, and the exploits of chieftains. Of such songs, there were many in the eighth century; and Charlemagne was fond of committing them to his memory. Eginhart, Vit. Car. Mag. c. 29. Of the celebrated Attila, it is said, that he had constantly his poets in waiting, and that their verses in honour

honour of his exploits, were a part of the entertainment of his court. *Prifcus*, p. 67. 68. In all rude times, the character of the bard is in repute, and attended with diffinctions. This character was not peculiar to our ancestors, as some writers have fancied; for we find it among the Greeks, and in other nations. It is peculiar to the early state of society, when the passions are warm, and language impersect.

[2] It is a common notion, that the poets and Troubadours were only to be found in France and Italy. They were frequent, however, in all the countries of Europe; and they hastened, by their

rivalship, the progress of literature.

Henry III. had a poet or Troubadour in his ferfervice, on whom he bestowed a regular pension. This circumstance is to be gathered from the following record. 'Rex thefaurario et camerariis · fuis salutem. Liberate de thesauro nostro, dilecoto nobis Magistro Henrico versificatori centum so-· lidos, qui ei debentur de arreragiis stipendiorum fuorum. Et hoc fine dilatione et difficultate fa-* ciatis, licet scaccarium sit clausum. T. R. apud " Wodstoke xiiij de Julii.' " The king, to his " treasurer and cofferers, health. Pay out of our " treasury to our beloved Mr. Henry, the writer of verses, one hundred shillings, which are owing " to him as arrears of his flipend. And this you " must do without delay or difficulty, though the " exchequer be shut. Given at Wodstoke, the " fourteenth day of July." 35. H. 3. ap. Madox, Hift. of the Exchequer, vol. 1. p. 391. There

There is a commission of Henry VI. De Ministrallis propter solatiam regis providendis, from which it is to be gathered, that the recitation or chaunting of songs, was an amusement in repute and fashion. Rymer, 34. Henry VI. The fifth Earl of Northumberland had his minstrels and players; and it was a qualification of his almoner, that he was 'a maker of interludes.' Housbold-book, p. 44. 85. 93. 331. 339. The reader may consult farther on this subject, an author, who is not more distinguished by the soundness of his knowledge, than by the classical simplicity of his language, Mr. Warton, in his history of English poetry.

[3] Histoire Litteraire des Troubadours, par M. l'Abbé Millot.

[4] It is to be observed, that it was the married women chiefly who vied in the merits of their poets and Troubadours. An interesting figure, as well as the talent of rhyming, was necessary to the Troubadour; and it was his constant aim to gain the heart or the person of his patroness. Perhaps it would be to refine too much, if one should consider the present insidelity of the married women in France, as a relict of this usage, and the corruptions of chivalry.

Of the Duke of Orleans, the brother of Charles VI. there is a pleafant notice in Brantome, which illustrates very aptly the profligate manners introduced by fiefs and chivalry. 'C'etoit un grand debaucheur de dames de la cour, et des plus grandes: Un matin en ayant une couchée avec lui dont le mari vint par hazard pour lui donner

[·] lui dont le mari vint par hazard pour lui donner

'le bon jour, il cacha la tête de cette dame, et · lui découvrit tout le corps, la faissant voir et toucher nue à ce mari à son bel aise, avec de-' fense sous peine de la vie d'oter le linge du vi-' fage . . Et le bon fut que le mari etant la ' nuit d'après couché avec sa femme, lui dit que . M. d'Orleans lui avoit fait voir la plus belle femme nue qu'il eut jamais vue; mais, quant au vi-' fage, qu'il n'en sçavoit que dire, ayant toujours 'été caché fous le linge.' It is added, 'De ce e petit commerce, fortit ce brave et vaillant bâ-' tard d'Orleans, Comte de Dunois, le foutien de 'la France et le fleau des Anglois.' "He was " a great debaucher of the ladies of the court, " and of the highest rank: One morning, being " in bed with one of them, whose husband came " by chance to wish him good morning, he con-" cealed the face of that lady, and discovered to " him her whole body, making this husband fee " her, and touch her at liberty, with orders, un-"der pain of death, not to take the linen from " her face . . The best was, that the husband " being next night in bed with his wife, told her " that Madame d'Orleans was the finest woman " naked that he had ever feen; but as to her face " he did not know any thing of it, being always " concealed under the linen." It is added, "From "this commerce fprung that brave and valiant " bastard of Orleans, Comte de Dunois, the sup-" port of France, and the terror of the English." Brantome, ap. St. Foix, Eff. hift. vol. 1. p. 319.

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[5] See, in St. Palaye, le voeu du Paon ou du Faisan, et les Honneurs de la Cour.

[6] Histoire des Troubadours, tom. 1. p. 11.

[7] This invention is afcribed to William the ninth Earl of Poitou. 'Ce fut un valereux et 'courtois chevalier, mais grand trompeur de dames.' "He was a valiant and courteous knight, 'but a great deceiver of the ladies." Hift. des

Troub. tom. 1. p. 4. 7.

[8] Le Moine de Fossan, a Troubadour, composed a song, in which he thus speaks of the Virgin. 'Je suis devant elle à genoux, les mains 'jointes, comme son tres humble esclave, plein 'd'ardeur dans l'attente de ses regards amoureux, 'et d'admiration dans la contemplation de son 'beau corps et de ses agreables maniers. "I am "besore her on my knees, with my hands joined, "as her must humble slave, sull of ardour, in the "expectation of her amorous looks, and admiration in contemplating her sine person and a- greeable manners." Hist. des Troub. tom. 2. p. 225.

[9] Deudes de Prades, a Troubadour, has this fentiment: 'Je ne voudrois pas être en Paradis à 'condition de ne point aimer celle que j'adore.' "I would not be in Paradife, on condition of "not loving her I adore." Hift. de Troub. tom. I.

p. 321.

[10] It was faid wittily, but not without reason, by the Troubadour Raimond de Castelnau: 'Si 'Dieu sauve pour bien manger et avoir des sem- 'mes, les moines noirs, les moines blancs, les Templiers,

'Templiers, les Hospitalieres, et les Chanoines ' auront le Paradis; et Saint Pierre et Saint André ' font bien dupes d' avoir tant souffert de tour-' mens, pour un Paradis qui coute si peu aux au-' tres.' " If God faves us for eating well, and ha-" ving women, the white and black monks, the "Templers, the Hospitaliers, and the Canons, " shall have Paradife, and St. Peter and St. An-" drew, are great dupes for having fuffered fo ma-" ny torments, for a Paradise which costs others Hist. des Troub. tome 3. p. 78. " fo little."

It was in confequence of the depraved manners of the clergy, that in England, the personage who, in the feafon of Christmas festivity, was to prefide in the houses of the nobility over riotous mirth and indecent indulgencies, was termed 'the ' abbot of misrule.' This character appears in the establishment of the fifth Earl of Northumberland, an. 1512. Housbold-book, p. 344. See also Dr. Percy's notes to this record.

In Scotland, the same character or personage feems to have been still more common, and even fo familiar in the lowest ranks of civil life, that he grew to be a nuisance in towns and boroughs. His appellation there was, 'the abbot of unreafon; and, when the feverity and flarchness of the reformation foured and deformed this country with the hypocritical preciseness, and the dismal formality which have not yet left it, an act of parliament was thought expedient to suppress and abolish an office so highly licentious and profane. 6. Parl. Mary 1555.

[11] Giannone, History of Naples, vol. 1. p. 283. 446. Mezeray, Moeurs de l'Eglise du xi. siecle. Du Cange Spelman, voc. Focaria. St. Palaye sur l'anc. cheval. partie 5.

[12] Joinville, Histoire de S. Louis, p. 32.

[13] 'Si quis dixerit conjugi, malam licentiam ' dando, vade et concumbe cum tali bomine; aut si ' dixerit alicui homini, veni et fac cum muliere mea ' carnis commixtionem; et tale malum factum fue-' rit, et caussa probata fuerit, quod per ipsum ma-' ritum factum fit, ita statuimus, ut illa mulier, ' quae hoc malum fecerit et consenserit, moriatur, ' fecundum anterius edictum; quia nec talem ca-' uffa probata fuerit, quod per ipfum maritum fac-' tum sit, ita statuimus, ut illa mulier, quae hoc ' malum fecerit et consenserit, moriatur, secun-' dum anterius edictum; quia nec talem caussam ' facere, nec celare debuit.' "If any one hath " faid to his wife, as a license for guilt, go and lie " with fuch a man, or if he hath faid to any man, " come and have carnal knowledge of my wife, and " fuch a crime hath been committed, and the cafe " proved, that fuch an action hath been done by "the husband, we ordain that this woman who " hath done, and confented to fuch a crime shall die, " according to our former edict, because she should " neither have committed, nor concealed fuch a " case." Leg. Longobard. p. 1096. ap. Georgisch, Corp. Jur. Germ. Antiq.

This law evinces the antiquity and the heinoufness of the practice alluded to; but, in posterior times, the fashion was thought of more lightly, 3 F and and had become too prevalent to be punished with feverity. See some curious information in Du Cange, voc. Cugus, Cucucia, Licentia Mald, Uxorare.

[14] The Gynaeceum, by which the apartment was expressed where the women were kept to work at the needle, and other domestic employments, came to fignify a brothel, or place of debauch, from the use that was made of it. Du Cange. voc. Gynaeceum. Over the doors of a palace which belonged to Cardinal Woolfey, there was written. Domus Meretricum Domini Cardinalis. " The lodg-" ing of the whores of his Lordship the Cardinal." It has been faid, indeed, that Meretrices flood of old for Lotrices; and the advocates for the chaftity of the Cardinal contend, of confequence, that this infcription only ferved to direct to his laundry. But, I am afraid, that this plea will not hold. For the terms were convertible; and the women who acted in the laundry, and who were employed in working in linen and tapeftry, were in general the convenient mistresses, to whom their lords paid a temporary worship. It was from some mistakes of this fort, that, in the reign of Elizabeth. there was an order, that no laundresses, nor women called victuallers, should come into the gentlemens chambers of Gray's Inn, 'unless they were 'full forty years of age.' Dugdale, Orig. Jurid. p. 286.

[15] Ranulph. de Hengham, Summa Magna,

cap. 1. and Selden's notes to it.

[16] In the *Britannia*, in the description of Surtey, there is this notice. 'Hamo de Catton held

· Catteshull-manour by being Marsball of the whores when the King should come into these parts.' Camden, vol. 1. p. 181. In the reign of Edward II. Thomas de Warblynton held the manor of Shirefeld in Hampshire, of the King in chief by the ferjeanty of being Marshall of the whores in the King's household, and of dismembering malefactors condemned, and of measuring the gallons and bushels in the King's household. The words of the record are, ' Tenuit in capite, die quo obiit de Domino E. nuper rege Angliae patre regis ' nunc, per fargantiam essendi Mareschallas de "meretricibus in hospitio regis, et dismembrare ma-· lefactores adjudicators, et mensurare galones et bussellos in hospitio regis.'* Pas. Fines 1. Edw. III. Rot. 8. a. ap. Bar. Angl. p. 242.

[17] The vaffal forfeited his estate in the following cases: 'Si dominum cucurbitaverit (id est, 'uxorem ejus stupraverit,) vel turpiter cum ea 'luserit. Si cum filia domini concuberit, vel nepte 'ex filio, vel cum nupta filio, vel cum sorore domini sui in capillo, id est, in domo suo manente.' "If he cuckolded his lord, that is to say, if he "whored with his lady, or handled her indecently; "if he lay with his lord's daughter, with the wife or daughter of his lord's son, or with his sister, "while she continued in the family." Lib. Feud. ap. Spelman Gloss. voc. Felonia.

The words in capillo, allude to a peculiarity in 3 F ij the

^{*} The preceding fentence contains an exact translation of this passage.

the Germanic and Gothic manners, which deferves to be explained. All virgins wore their hair uncovered, and with ornaments. Married women concealed their hair, and covered their heads. The ornaments for the hair were many. And, in the progress of time, it was not the hair of their heads only, that the women were curious to deck out. The mother of the fair Gabrielle being affaffinated, her body lay, for many hours, exposed in a public manner, to the spectator, and in a posture fo exceedingly indecent, that it discovered a strange mode or affectation. In this last fashion, which was probably introduced in the decline of chivalry, the ornaments were ribands of different colours; and, it feems to have been peculiar to women of rank and condition. St. Foix, Eff. Hift. vol. 4. p. 82.

In general, it merits remark, that the veneration for their hair entertained by the Germans and their posterity, was very great and gave rise to a multitude of customs. It was a mark of refined attention in a person to present a lock of his hair to a friend on faluting him; it was to fay, that he was as much devoted to him as his flave. To take away the hair of a conspirator, was one of the most afflicting parts of his punishment. To give a flave the permission of allowing his hair to grow, was to offer him his freedom. Du Cange and Spelman, voc. Capilli. William Earl of Warrene, in the age of Henry-III. granted and confirmed to the church of St. Pancrace of Lewes, certain land, rent, and tithe, and gave feifine of them ' per ca-· pillos

'pillos capitis sui, et fratris sui Radulsi de Warr.
'quos abscidit de capitibus suis cum cultello ante
'altare.' "By the hair of his head, and by that
"of his brother Radulph de Warrin, which he
"cut out of their heads with a knife before the
"altar." Mag. rot. 24. Henry III. ap. Madx.
Hist. of the Excheq. Prefatory Epist. p. 30. This
must have been a compliment in the highest style
of slattery; and the clergy of St. Pancrace must
have been enchanted with the politeness of this
nobleman.

There feems fomething wild and romantic in fuch usages; yet they produced the locket and the hair-ring of modern times; and we smile not nor are surprised, that these should teach us to employ our moments of softness in melancholy recollections of absent beauty, or departed friendship. What is distant and remote, affects us with its ridicule. What is present and in practice, escapes our censure. In the one instance, we act with the impartiality of philosophers; in the other, we are carried away by our passions and our habitudes.

[18] St. Foix, Eff. Hiftor. vol. 1. p. 102 Stow, Survey of London, in the edition of Strype, vol. 2. p. 7.

[19] There is evidence of public or licensed stews in England in Stat. 2. Henry VI. cap. 1. in Cowel, voc. Stews, Spelman, voc. Stuba, and in Coke, 3. Institute, ch. 98. Henry II. gave his privilege to the stew-houses of Southwark, according to the 'old customs which had been used there

'time out of mind.' And patents confirming their liberties were granted by other princes. Stow, in Strype's edit. vol. 2. p. 7. In Normandy, there was a custos meretricium, and this officer seems to have been known in the different countries of Europe. Du Cange, voc. Custos meretricium, et Panagator.

It has frequently been a subject of inquiry among politicians, whether public stews, under proper regulations, with a view to the health of individuals, and the peace of fociety, be not an advantageous institution. In some states of Europe, a tolerated or authorized profitution is known at this day. And, by the Code of Gentoo laws, this institution was acknowledged as falutary; and profitutes forming a community were, in Hindostan, an object of care to the government. I avoid, however, to enter into a queftion of fuch infinite delicacy. It is dangerous in a flate to give the flightest stab to morality. Yet. I cannot but observe, that, in the most cultivated nations, there are laws and regulations which wound morality more feverely than could be done by an authorized profitution, and with less of utility to mankind.

[20] The licensed stew-houses in the reign of Henry VII. were the Boar's-head, the Cross-keys, the Gun, the Castle, the Crane, the Cardinal's Hat, the Bell, the Swan, &c. Sir Edward Coke has preserved this information, 3. Institute, p. 205. In the time of Edward VI. Bishop Latimer complained and preached to the following tenor.

'There

'There is more open whoredom, more flued whore-

' dom, than ever was before. For God's fake, let

' it be lookt to.' Stow, in Strype's edit. vol. 2. p. 8.

[21] 3. Institute p. 206.

[22] Spelman voc. Stuba, 3. Institute, p. 205.

APPENDIX.

APPENDIX.

No. I. P. 224.

ART. I.

Charter of Dowry which Folradus granted to his wife, Helegrina.

In Dei nomine. Dulcissima sponsa mea Helegrina. Ego enim Folradus filius quondam Eriperti ex genere Francorum, et modo habitator sum in pago Pinnensi. Dum non est incognitum qualiter per voluntatem Dei vel parentum quondam tuorum te desponsavi et carnali conjugio fociari dispono, propterea dono tibi He. sponsa mea in honore pulchritundis tuae in die nuptiali dotem dignam atque aptam, hoc est, mansos meos infra vicum Pinnensem, qui mihi pertinet et ex comparatione evenit et data mea pecunia comparavi. Trado tibi ipfos manfos cum omni integritate fua et domum dignam ad commanendum exquisitam casam unam constratam, cum, omnibus utenfilibus et vafis, cum omnibus adjacentiis ad ipsos mansos aspicientibus vel pertinentibus, cum terris et vineis, pomis, cum omnibus quae super se habentur vel ad ipsam curtem de Vico pertinent, et quae habere visus sum, vel inantea Deo adjuvante ibidem parare vel conquirere potuero, in integrum ista omnia superius comprehenfa, fi nos Deus carnali conjugio fociari voluerit, in die nuptiali tibi dono, trado, atque transcribo ad possidendum, ut quicquid exinde facere volueris, liberam et firmissimam in omnibus habeas potestatem. quis vero, quod futurum esse non credo, fuerit inpostmodum ego aut aliquis de heredibus meis, seu quaelibet ulla opposita persona contra hanc cartulam libellum dotis venire tentaverit, aut eam frangere voluerit, primitus

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iram Dei incurrat, et insuper una cum socio fisco aurum libram unam, argentum pondera duo mulctam componat et quod repetit non vendecit, sed haec cartula libellum dotis omni tempore sirma et stabilis permaneat, cum stipulatione subnixa. Inde pro stabilitate vestra Audoaldum Notarium scribere rogavimus. Actum in Vico anno regni et imperii Domini Ludovici xxx. et primq anno Supponis Comitis, die viiii. mensis Junii, Indictione v. Signum Folradi, qui hunc libellum dotis sieri rogavit. Lioto, Majolfus, Aloini, testes.

" In the name of God. My most beloved spouse He-"legrina. I Folradus, the fon of the late Eripertus, " of the nation of the Franks, and now refiding in the " province of Pinneberg. As it is not unknown that by "the pleasure of God, and the consent of your late pa-" rents, I have married you, and agree to be united " with you in marriage, I give to you Helegrina, my " fpouse, in honour of your beauty, on the day of mar-" riage, a dowry worthy and fuitable to it; that is, " my dwelling in the village of Pinneberg which belongs " to me, and came to me by purchase, and which I ob-" tained by giving my money. I deliver to you my " dwelling house with all its pertinents, and a lodging " worthy of your residence, with all the utenfils and " furniture, and with all the places lying adjacent, " the lands, the vineyards, the orchards, and all which "they contain, I at prefent appear to have, or shall " hereafter by the help of God be able to obtain or ac-" quire. Since God has been willing that we should be " joined in wedlock, I give you all these above recited " possessions, and assign them to you, to enjoy or do " with them whatever you pleafe, that you may have " free and absolute authority over them. If any one of " my heirs, which I do not believe will happen, or " any other person shall attempt to contravene this " disposition of dowry, or has a mind to infringe it, he " fhall

"Thall in the first place, incur the anger of God, and "moreover, with his confederate shall compound with "the fiscal for a fine of one pound of gold, and two "weights of silver. Therefore we have requested Au- doaldus, the notary to write, for your security. This is done in the village, in the thirtieth year of the reign and government of our sovereign Lewis, upon the eighth day of June.

"Sealed by Folradus, who has requested that the dis"position of dowry might be made. Witnesses, Lioto,
"Majolfus, Aloinus." An. 827. Ex. Chartulario Monasterii Casauriensis, ap. Baluz. Capit. Reg. Franc. vol. 2.
p. 1427.

ART. II.

A reciprocal Grant. Roger Pit and his Wife grant and release to the Priour of Brommore a Tenement held in Dower; and the Priour grants a yearly Rent for the Life of the Wife.

SCIANT praesentes suturi, quod hace est carta Cyrographata, anno ab Incarnacione Domini Millesimo CCXLIIII sacta, inter Dominum S. Priorem et Conventum de Brummore ex una parte, et Rogerum de la Putte et Editham uxorem suam ex altera. Scilicet, quod praedictus Rogerus et Editha uxor sua, tradiderunt, et concesserunt, et quietum clamaverunt, ad vitam ipsorum, totum tenementum quod dictae Edithae evenit in dotem, de Hugone Fichet, in villo de Brummore, cum omnibus pertinenciis. Et dicti Prior et Conventus tenentur reddere, singulis annis, ad sestum S. Michaelis, tres sol. et VI denar. dictis Rogero et Edithae uxori suae, quamdiu ipsa vixerit. Si vero, quod absit, praedicti Prior et Conventus dictum redditum, scilicet III sol. et VI den. praenotato termino non solverint praedictis R et E ux-

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ori suae, licebit tenementum suum distringere, donec surerit eis satissactum. Tenentur etiam acquietare dictum Rogerum et E uxorem suam, de omnibus sectis tam comitatus quam Hundredi, et omnium aliarum Curiarum, et de omnibus taillagiis tam Regalibus quam aliis, dicto tenemento spectantibus. Hanc Convencionem sideliter et sine dolo tenendam, ex utraque parte assidaverunt. Et ad majorem securitatem saciendam, alterno scripto sigilla sua apposuerunt. Hiis testibus, Ric. de Burle, Johanne Baldewin, Johanne de Brummore, Rocelino de Burle, Hugone de Lapolot, Philippo le Champiun; et multis aliis.

"Know ye who are now and are to be hereafter, that "this charter is made in the year of the incarnation of our "Lord one thousand two hundred and forty-four, be-"tween his Lordship the priour and convent of Brom-" more on the one part, and Roger Pit and Editha his " wife on the other part, to wit, the faid Roger and E-" ditha his wife, have delivered, granted, and peaceably " assigned for their lives, the whole tenement which " came to the faid Editha in dower, from Hugh Fichet " in Brommore, with all its pertinents. And the faid " priour and convent are bound to pay every year, at "the Feaft of St. Michael, three shillings and fix-pence " to the faid Roger and Editha his wife, as long as they " shall live. But if, which may it never happen, the " faid priour and convent shall not pay the faid rent, " to wit, three shillings and fix-pence at the said time, " to the faid Roger and Editha his wife, it shall be law-" ful for them to feize upon the faid tenement till they " are fatisfied. For they are bound to free the faid Ro-" ger and Editha of all fuits for the shire, and the hun-" dred, and all other courts, and all tallages, both to " the king and others, on account of the faid tenement. "And they have engaged to abide by this agreement " faithfully, and observe it, without fraud, on both " fides "fides. And for farther fecurity, they have affixed their feals, and subscribed it. These are the witnesses, "Richard Burle, John Baldewin, John Brummore, Roceline Burle, Hugo de Lapolot, Philip le Champiun, and many others." Ap. Madox, Formulare Anglicanum, p. 84.

ART. III.

A Release of a yearly Rent in Dower.

Omnibus Christi fidelibus ad quos praesens scriptum pervenerit, Nicholaa quae fui uxor Willelmi de Nafford Bereford falutem in Domino. Noveritis me in pura et legitima viduaetate mea, relaxasse et omnino pro me et haeredibus meis vel assignatis quietum clamasse Domino Fulconi de Lucy Militi, et haeredibus fuis vel affignatis, totum Jus et clameum quod habui vel aliquo modo habere potui, in tribus folidatis redditus quos ab eodem Domino Fulcone recipere folebam nomine Dotis meae per annum, ad festum Sancti Michaelis, de tenemento quod Johannes de Merehull tenuit in Bereford; Ita quod nec ego nec haeredes mei vel affignati, nec aliquis nomine meo, aliquid juris vel clamii a praefato Domino Fulcone et haeredibus suis vel assignatis, occasione dictorum trium solidorum redditus, decaetero exigere vel vendicare poterimus. In cujus rei testimonium, praesenti scripto Sigillum meum apposui. Datum Berefordiae die Lunae in Crastino S. Mariae Magdelenae, Anno regni Regis Edwardi decimo nono.

"To all the faithful in Christ, to whom this present writing may come. I Nicholas, formerly wife of

"William de Nafford in Bereford, wish the Lord may fend health. Know ye, that I, in my virtuous and

" lawful widowhood, have renounced, and for me, my

" heirs, and assigns, have for ever resigned to Sir Tulco

" de Luce, Knight, and his heirs or assigns, the whole

"right and claim which I have, or by any ways am

as able

₿.

" was in use to receive from the said Sir Tulco, in name of yearly dowry, at Michaelmas, from the tenement which John Merehull possessed in Bereford; so that neither I, my heirs or assigns, nor any one in my name, may be able to exact or demand any right or claim from the said Sir Tulco, his heirs or assigns hereafter, on account of the said rent of three shillings. In testimony whereof, I have fixed my seal to this present writing. Given at Bereford, on Monday, on St. Magdalene's day, in the nineteenth year of the reign of King Edward." Ap. Formulare Anglicanum, p. 381.

No. II. P. 240.

ART. I.

A Feoffment in Frankmarriage of Land, a Capital Mansion, &c. made to a Man with the Daughter of the Feoffer.

Sciant omnes tam praesentes quam futuri, quod ego Petrus de Poketorp dedi et concessi, et hac mea praesenti carta confirmavi, Herveio filio Willelmi filii Jole, in Maritagio cum Matilda filia mea, duos bovatas terrae in Snape cum pertinenciis; illas scilicet quae sunt remociores a Sole, in dimidia carucata terrae quam Robertus filius Radulfi michi dedit pro Humagio et Servicio meo; Et capitalem Mansuram meam in eadem villa; Et gardinum meum ultra aquam; et pratum meum apud Sutham Kelde; et praeterea apud Joles Croft tres acras terrae et dimidiam, illi et haeredibus qui de praedicta filia mea exibunt: Tenendum de me et de haeredibus meis in feudo et haereditate, libere, et quiete : Faciendo forinfecum fervicium, quantum pertinet duabus bovatis terrae in feudo quo duodecim carucatae terrae faciunt feudum unius Militis. Et ex incremento dedi ei servicium duarum bovatarum terrae in Torneton Watlous,

lous, quas Herveius de Norfolk de me tenuit, et quas Tomas de Torneton et Beatricia Sponsa sua michi pro Humagio et Servicio meo dederunt. Hiis testibus (viz. seven persons) et multis aliis.

"Know ye all now alive and to be hereafter, that I " Peter de Poketorp, have given and granted, and by " this present charter have confirmed to Hervey the fon " of William the fon of Jole, in marriage with my "daughter Matilda, two ploughs of land, in Snape, " with the pertinents, to wit, those which lie remote " from the fun, in that portion of land, which Ro-"bert the fon of Randolph gave me for my fervice; " and that my mansion in the same estate, and my gar-" den beyond the water, and my meadow at South "Kelde; and besides, at Jole's Croft, these three acres " and a half of land to him, and the heirs descending " from my faid daughter, to be held freely and peace-" ably of me and my heirs of feu and heritage, by per-" forming out-field service, as much as belongs to two " ploughs of land, in which feu, twelve ploughs of " land make one knight's fee. And over and above, I " have given to him the use of two ploughs of land in "Torneton Watlous, which Hervey de Norfolk held " of me, and which Thomas de Torneton, and Beatrice " his spouse gave to me for homage and service. These " witnesses, (viz. &c.) and many others." Ap. Formulare Anglicanum, p. 79.

ART. II.

A Feoffment, or Gift of Land in Frankmarriage with the Sifter of the Donor.

Sciant tam praesentes quam futuri, quod ego Ricardus Takel de Burnham, cum assensu Miruldae uxoris meae, et Galfridi mei filii et haeredis mei, dedi et concessi, Ø,

concessi, et praesenti carta mea confirmavi, Galfrido filio Johannis de Haxai, cum Alicia forore mea, in libero maritagio, totam terram quam habui arabilem et in prato in Blespit; illi scilicet et haeredibus suis, tenendam de me et haeredibus meis, libere, solide, et quiete : Reddendo inde annuatim mihi et haeredibus meis, pro omni fervicio et exactione faeculari ad nos pertinente, quatuor denarios ad duos terminos, scilicet duos denar. ad festum Omnium Sanctorum, et duos denar. ad Purificacionem beatae Mariae. Et ego et haeredes mei, praedictam terram illi et haeredibus fuis, pro praedicto fervicio, contra omnes homines warantizabimus in perpetuum. Hiis testibus, Roberto Takel de Burnham, Galfrido de Burnham, Roberto de Burnham, Roberto Norrais, Gregorio ad Aulam, Samfone de Landeles, Elid Capellano; et multis aliis.

"Know ye all now alive and to be hereafter, that I " Richard Takel of Burnham, with the confent of Mi-" rulda my fpouse, and Galfred my son and heir, to "have given and granted, and by this prefent charter. " confirmed to Galfred the fon of John of Hax, in free "dowry with my fifter Alice, the whole land, arable " and in meadow, which I have possessed in Blespit; to "him, viz. and his heirs, to be held of me and my "heirs, freely, abfolutely, and peaceably, for an an-" nual payment to me and my heirs, for every fecular. " fervice and exaction belonging to us, of fourpence, " at two terms, viz. twopence at the Feast of All Saints, " and twopence at the Purification of the Virgin Mary. "And my heirs warrant for ever the forefaid lands to "him and his heirs, for the fervice aforefaid, against " all men. These witnesses, (Robert Takel, &c.) and " many others." Ap. Formulare Anglicanum, p. 81.

No. III. P. 257.

ART. I.

A Grant of Privilege and Protection from King Edward to the Abbey of Bury St. Edmund.

EADWEARDUS Rex falutem mitto meis Episcopis et meis Comitibus, et omnibus Theinis meis qui sunt in Sciris ubi Sanctus Eadmundus habet terras, benevole. Et vobis significo, quod volo ut Leosstannus Abbas et omnes Fratres in Eadmundi burgo Saca et Socna sua libere potiantur de omnibus suis propriis hominibus, tam intra Burgum quam extra. Et nolo pati ut quisquam eis ullam injuriam inferat.

"Edward the King, to all my bishops, my earls, and "my thanes, residing in the shires where St. Edmund has lands, health. I intimate to you, that it is my pleasure, that Leosstan the abbot, and all the brothers in the abbey of Bury St. Edmund, shall freely enjoy their privileges and jurisdiction over all their proper vassals, both within the Bury, and without it. And I am unwilling that any one shall inslict an injury on them." Ap. Form. Anglic. p. 290.

ART. II.

A Mandate of Protection from King Henry the Second for the Abbey of Battell.

H. DEI gratia Rex Angliae, et Dux Normanniae et Aquitaniae, et Comes Andegaviae, Justiciariis, Vice-comitibus, et omnibus Ministris suis Angliae, in quorum baillivis Abbas et Monachi de Bello habent terras, salutem. Praecipio vobis, quod custodiatis et manute-

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neatis et protegatis Abbatiam de Bello et Monachos ibidem Deo servientes, et terras et omnes res et possessiones suas, sicut meas proprias; nequis eis injuriam faciat
vel contumeliam; Et non vexetis eos, nec injuriam aliquam eis faciatis nec sieri permittatis, exigendo ab eis
consuetudines vel servitia quae Cartae meae et Antecesforum meorum testantur quod habere debent; et siquis
eis injuriam intulerit, contra libertates et consuetudines
quas Cartae suae testantur quod habere debent, eam ipsis sine dilatione emendari faciatis. Teste Ricardo Episcopo Wintoniensi apud Lutegareshall.

"Henry, by the grace of God king of England, Duke " of Normandy and Aquitaine, and Earl of Anjou. "To the justiciaries, earls, and all others, his officers, " in England, within whose jurisdiction the abbot and " monks of Battell, poffess lands, health. I command " you, that ye keep, preserve, and protect, the abbey " of Battell, and the monks there ferving God, and "their lands, and their whole goods, and possessions, as " if they were my own, left any one do any injury or " infult to them; and ye shall not harass them, nor com-" mit any wrong, or fuffer any wrong to be committed " against them, by exacting from them duties or fer-"vices which my charters, and those of my ancestors, " testify that they ought not to perform. And if any " one commits an injury against them, contrary to the "liberties and usages to which their charters attest " their title, ye shall cause such an abuse to be remedied " without delay." Ap. Form. Anglic. p. 296.

ART. III.

Fines made to Kings, that they would remit their Refentments and Indignation.

OBSERTUS de Lerec. debet cc marcas argenti, ut Rex pardonaret ei et Osberto Clerico suo malivolentiam suam.

" Ofbert de Lerec. owes two hundred marks of filver that the king may pardon him, and Ofbert his clerk, for their difaffection." Mag. Rot. 5. Steph.

Tomas Clericus de Camera debet ij palefridos pro Roberto Capellano, ut Rex pardonaret eidem Roberto, malivolentiam fuam, quia comedit cum praedicto Toma apud Corf.

"Thomas Clerk, of the treafury, owes two palfreys,

" for Robert Capel, that the king may pardon the same

" Robert his disaffection, because he rioted with the said

"Thomas at Corf." Mag. Rot. 6. Job.

Galfridus de Infula debet quater xxxv marcas, ut Rex remittat indignationem.

"Galfrey of the Island, owes four times thirty-five "marks, that the king may remit his resentment." Ex. Memor. 31. Henr. 3. Rot. 10.

Willelmus de Ros debet c marcas, ut Rex remittat indignationem. "William Ross owes one hundred marks, "that the king may remit his resentment." Ib. Roi. 11. Madox, Hist. of the Exchequer, vol. 1. 472:---476.

ART. IV.

Fines for Favour, and Protection.

GILEBERTUS filius Fergasi debet DCCCC et xixl. et ixs. pro habenda benevolentia Regis.

"Gilbert the fon of Fergus owes nine hundred and "nineteen pounds nine shillings, for having the king's good will." Mag. Rot. 26. H. 2. Rot. 4.

Radulfus Murdac debet Ll. et vijs. et viijd. pro habendo amore regis Ricardi.

"Radulph Murdac owes fifty pounds feven shillings and eightpence for having the friendship of King Richard." Mad. Rot. 11. J. Rot. 14.

Decanus et capitulum Londoniae debent ij palefridos, 3 H ij " pro pro protectione, nec vexentur contra libertates carta-

"The dean and chapter of London owe two palfreys for protection, and that they may not be haraffed contrary to the privileges of their charter." Mag. Rot. 2.
F. Rot. 11. Hift. of Excheq. cb. 13.

No. IV. P. 267.

An Accord or Truce between the Earl Marshall, and the Earl of Gloucester, and their Men, under Reciprocal Oath.

SCIANT hoc scriptum visuri, quod cum die Dominica proxima ante Cathedram Sancti Petri, Inter Dominum R. de Clifford ex parte Comitis Marescalli, Et Dominum Ricardum Basset et Martinum Hostiarium, ex parte Comitis Glocestriae, super quibusdam excessibus tractatus haberetur; tandem inter eos fic convenit. Videlicet quod Homines dictorum Comitum, fidelem et firmam Treugam ex utraque parte, a dicta die Dominica usque in sexdecim dies proximo sequentes inviolabiliter observabunt. Et Dominus R. de Clifford, die Lunae proximo post dictum Festum, ad Comitem Glocestriae apud Cirencestriam accedet, ad formandam pacem inter praedictos Comites. Et fi alter eorum tunc venire nequiverit, hoc alteri parti die Veneris proximo praecedente vel die Sabbati, scilicet Comiti Glocestriae apud Fayreford, vel Domino Rogero de Clyfford apud Suttun juxta Banneburiam denuncietur. Ad hoc fi Morgan filius Hoel dictam Tregam pro se et Hominibus suis tenere voluerit, recipiatur in ipsam; Quod si noluerit, tunc durantibus treugis habitabit in montanis, nec in aliquod Castrum vel Burgum ipse vel sui interim admittentur. Haec autem firmiter. et absque dolo, et omni cavillatione, Dominus R. de Clyfford et W. de Lucy ex parte Comitis Marscalli, et Dominus R. Basset et M. Hoftiarius

Hostiarius pro Comite Gloucestriae, assidaverunt. In hujus autem rei testimonium, praesens scriptum in modum Girograssi est compositum; Cujus una pars, Sigillis dicti R. de Clyssord et W. de Lucy signata, dictis R. Basset et M. est commissa, Reliqua vero parte, signis dicti R. Basset et M. est signata, penes R. de Clyssord remanente.

"Let all who are to fee this writing, know, that " upon the last day of St. Dominic, a treaty was held " before the church of St. Peter, between Sir Roger "Clifford, on the part of the Earl Marshall, and Sir " Richard Baffet, and Martin * * * * respecting " fome outrages. At length it was agreed between "them thus, viz. That the followers of the faid earls. " shall observe a firm and faithful truce, on their parts, " from the faid day of St. Dominic, inviolable, for the " following fixteen days. And Sir Roger Clifford, on the " Monday next after the faid holiday, shall wait upon " the Earl of Gloucester at Cirencester, for establishing "a peace between the faid earls. And if either party " shall not be able to attend, this shall be told to the o-"ther party, on the Friday, or the Sabbath day pre-" ceeding, viz. to the faid Earl of Gloucester at Fayre-" ford, and to Sir Roger Clifford at Sutton, near Ban-"bury. And farther, if Morgan, the fon of Hoel is " willing to observe the said truce for himself and his " followers, he shall be admitted into it. But if he is " unwilling, in that case, during the truce, he and his " followers shall reside in the mountains, nor shall they " be admitted into any castle or borough. And Sir Ro-" ger Clifford, and William Lucy, on the part of the " Earl Marshall, and Sir Richard Basset, and Martin " * * * * for the Earl of Gloucester have agreed to " observe these articles, faithfully, and without fraud " or scruple. In testimony whereof, this present writing is attested by their own hands, of which one du-" plicate

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"plicate is stamped with the seals of the said Roger Clifford and William Lucy, and is given to the said "Richard Basset and Martin; and the other duplicate, "stamped with the seals of Richard Basset and Martin, "remains with Roger Clifford." Ap. Form. Anglic. p. 84.

No. V. P. 291.

ART. I.

An Injunction not to Torney, by Henry III.

Rex Comitibus, Baronibus, Militibus, et omnibus aliis, ad inftantem diem Jovis in vigilia Beati Martini, feu aliis diebus apud Warrewicum, ad torneandum ibidem conventuris, salutem. Mandamus vobis, in side, homagio et dilectione, quibus nobis tenemini, sirmiter injungentes, et sub poena amissionis terrarum et tenementorum et omnium bonorum vestrorum, quae in regno nostro habetis, districte inhibentes, ne ibi vel alibi in eodem regno nostro torneare, justas sacere, aventuras quaerere, seu alio modo ad arma ire, praesumatis, sine licentia nostra speciali. Scituri, quod si secus egeritis, nos terras, tenementa et omnia bona vestra in manum nostram capiemus, et ea retinebimus tanquam nobis sorissacta. In cujus, &c. T. Rege apud Westmon. iiii die Novembris.

"The king, to the earls, barons, knights, and all others, about to meet for a torneament at Warwick, on Tuesday next, being St. Martin's day, or any other days, health. We command you, by the fealty, homage, and affection, by which you are bound to us, and we strictly enjoin you, under the penalty of losing your lands, tenements, and all your possessions, which ye have in our kingdom, and we strictly prohibit you, that neither there, nor elsewhere, within our kingdom,

"ye presume, without our special licence, to torney, make justs, or seek adventures, or go to arms in any other manner. Know ye, that if ye do on the contrary, we shall take your lands, tenements, and whole property into our hands, and hold them as forfeited, In witness whereof, &c." Pat. 57. Hen. 3. m. 1. Apud Madox, Baronia Anglica, p. 283.

ART. II.

Probibition of Torneaments by Edward III.

REX Vicecomiti Lincolniae falutem. Praecipimus tibi, firmiter injungentes, quod statim visis praesentibus, per totam ballivam tuam, in Civitatibus, Burgis, et locis aliis quibus melius videris expedire, publice proclamari, et districte ex parte nostra facias inhiberi, nequis fub forisfactura vitae et membrorum, terrarum et tenementorum, bonorum et catallorum fuorum, ac omnium illorum que nobis forisfacere poterunt, torneamenta, justas aut burdeicias facere, seu aliter infra ballivam tuam ad arma ire praefumant, fet fe praeparent quanto potentius poterunt, ad proficiscendum nobiscum in obsequium nostrum ad partes Scociae, ad rebellionem et nequiciam quorundam Scotorum rebellium et proditorum nostrorum, jam contra nos prodicionaliter infurgencium, viriliter, cum Deo et ipsorum adjutorio, reprimendam; Ita quod omnes homines ad arma de balliva tua, quilibet videlicet juxta exigenciam status sui, sint ad nos cum equis et armis apud Karliolum, in quindena Nativitate Sancti Johannis Baptistae proximo futura ad ultimum, ad apponendum una nobifcum, et cum confimilibus fidelibus nostris, quos tunc nobifcum ibidem adesse contigerit, super negociis statum terrae nostrae Scociae tangentibus, prout nobis Altissimus duxerit inspirandum confilium et juvamen. Praecipimus eciam tibi, quod fi \mathfrak{B}

fui vel quis torneamenta, justas, aut burdeicias, contra hanc inhibitionem nostram, infra ballivam tuam facere, eu aliter ad arma ira praesumat, tunc corpora ipsorum vel ipsius, quos vel quem delinquentes vel delinquentem inveneris in hac parte, fine dilatione capias, et in prifona nostra falvo custodias, donec aliud inde praeceperimus. Et nos de hiis quae facienda duxeris in praemiffis, in crastino Sanctae Trinitatis proximo futuro reddas distincte et aperte certiores, hoc breve nobis remittentes.

T. Rege apud Wolveseye vi die Aprilis.

"The king, to the sheriff of Lincoln, health. We " command and firifly enjoin you, that, infantly " these presents being seen, you cause it to be pub-" licly proclaimed through your whole jurisdiction, " in the the towns, boroughs, and other places where " you may fee it most expedient, that we strictly for-" bid, under the penalty of forfeiting life and limb, " lands and tenements, goods and chattels, and all o-"ther things which they can possibly forfeit, if they " presume to make torneaments, or justs, or in any " other way go to arms within your jurisdiction. But "let them prepare themselves, as ably as they can, " for marching along with us, and under our command, " to the country of Scotland, for manfully suppressing, " by God's affiftance and theirs, the rebellion and wick-" edness of certain Scottish rebels, and others, traitors " to us, now rifing treasonably against us; therefore, "that all men at arms, in your jurisdiction, and every " one of them, on this exigency of the state may attend " us, on the fifteenth day next after the Nativity of St. " John the Bapist, at farthest, for assembling themselves " along with us, and the rest of our faithful subjects, " who shall happen to be along with us, concerning cer-" tain affairs touching the fituation of our land of Scot-" land, as the Most High shall have inspired us with " counsel and advice. We command you, likewise, that

"if any one or more, in spite of this prohibition, shall "presume to make torneaments, justs, or go other"wise to arms, then you shall seize, without de"lay, the bodies of them or him who shall be found
"transgressing in that respect, and keep them in safe
"custody in our prison, till we have given you further
"orders. And you shall give us distinct and clear in"formation concerning your proceedings in the pre"mises, in consequence of our orders, by sending us 2
"short account betwixt and next Trinity Day. Given
"at Wolveseye, the sixth day of April."

Eodem modo mandatum est singulis Vicecomitibus Angliae.

"The same orders were dispatched to every sheriff in "England." Clauf. 34. Edw. 3. m. 16. dorfo. Ap. Barron. Anglic. p. 289.

No. VI. p. 309.

The Order and Manner of creating Knights of the Bath in the time of Peace, according to the Custom of England*.

When an efquire comes to court, to receive the order of knighthood, in the time of peace, according to the custom of England, he shall be honourably received by the officers of the court; Sc. the steward or the chamberlain.

* This narrative is a translation of an old tract in French, which was first published by Edward Byshe, Esq; in his learned notes to Upton de Studio Militari, p. 21.—24. Sir William Dugdale took the trouble to turn it into English, in his antiquities of Warwickshire, vol. 1. p. 708. to 710. Both in Byshe and in Dugdale this narrative is illustrated by figures, delineated from a book in which they were drawn in colours, in the time of Edward IV. Pere Daniel holds it as expressive of the ceremonies used in France; and, it is to be thought, that they were universal over Europe. The original French, of which the navieté of the style has been observed, is to be found both in Upton and P. Daniel. Of the ceremonies, the fantastickness and levity are not more remarkable than the important seriousness with which they were performed.

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berlain, if they be present, but otherwise by the marshalls and ushers. Then there shall be provided two esquires of honour, grave, and well seen in courtship and nurture, as also in the seats of chivalrie, and they shall be esquires, and governours in all things relating to him, which shall take the order aforesaid.

2. And if the esquire do come before dinner, he shall carry up one dish of the first course to the king's table.

3. And after this the esquire's governours shall conduct the esquire, that is to receive the order, into his chamber, without any more being feen that day.

- 4. And in the evening the esquire's governours shall fend for the harbour, and they shall make ready a bath, handsomely hung with linen, both within and without the veffel, taking care that it be covered with tapiffrie and blankets, in respect of the coldness of the night. And then shall the esquire be shaven, and his hair cut round. After which the efquire's governours shall go to the king and fay, "Sir, it is now in the evening, and "the efquire is fitted for the bath when you please:" Whereupon the king shall command his chamberlain that he shall take along with him unto the esquire's chamber, the most gentle and grave knights that are present, to inform, counsel, and instruct him touching the order, and feats of chivalrie: And, in ilke manner, that the other esquires of the household, with the minstrells, shall proceed before the knights, finging, dancing, and sporting, even to the chamber door of the faid esquire.
- 5. And when the efquire's governours shall hear the noise of the minstrells, they shall undress the said efquire, and put him naked into the bath: But, at the entrance into the chamber, the esquire's governours shall cause the music to cease, and the esquires also for a while. And this being done, the grave knights shall enter into the chamber without making any noise, and, doing re-

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verence to each other, shall consider which of themselves it shall be that is to instruct the esquire in the order and course of the bath. And when they are agreed, then shall the chief of them go to the bath, and kneeling down before it, say, with a soft voice: "Sir! be this "bath of great honour to you;" and then he shall declare unto him the seats of the order, as far as he can, putting part of the water of the bath upon the shoulder of the esquire; and having so done, take his leave. And the esquire's governours shall attend at the sides of the bath, and so likewise the other knights, the one after the other, till all be done.

6. Then shall these knights go out of the chamber for a while; and the esquire's governours shall take the esquire out of the bath, and help him to his bed, there to continue till his body be dry; which bed shall be plain and without curtains. And as soon as he is dry, they shall help him out of bed, they shall cloath him very warm, in respect of the cold of the night; and over his inner garments shall put on a robe of russet, with long sleives, having a hood thereto, like unto that of an hermite. And the esquire being out of the bath, the barbour shall take away the bath, with whatsoever appertaineth thereto, both within and without, for his see; and likewise for the coller (about his neck) be he earl, baron, baneret, or batcheler, according to the custom of the court.

7. And then shall the esquire's governours open the dore of the chamber, and shall cause the antient and grave knights to enter, to conduct the esquire to the chapell: And when they are come in, the esquires, sporting and dancing, shall go before the esquire, with the minstrells, making melodie to the chapell.

8. And being entered the chapell, there shall be wine and spices ready to give to the knights and esquires. And then the esquire's governours shall bring the said

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knights before the esquire to take their leave of him; and he shall give them thanks all together, for the pains, favour, and courtesie which they have done him; and this being performed, they shall depart out of the chapell.

9. Then shall the esquire's governours shut the dore of the chapell, none staying therein except themselves, the priest, the chandler, and the watch. And, in this manner shall the esquire stay in the chapell all night, till it be day, bestowing himself in orisons and prayers, beseeching Almighty God and his blessed mother, that, of their good grace, they will give him ability to receive this high temporal dignitie, to the honour, praise, and service of them; as also of holy church, and the order of knighthood. And, at day break, one shall call the priest to consess him of all his sins, and, having heard mattines and mass, shall afterwards be commended, if he please.

to. And after his entrance into the chapell, there shall be a taper burning before him; and so soon as mass is begun, one of the governours shall hold the taper untill the reading of the gospell; and then shall the governour deliver it into his hands, who shall hold it himself, till the gospell be ended; but then shall receive it again from him, and set it before him, there to stand during the whole time of mass.

vernours shall take the hood from the esquire, and asterwards deliver it to him again, untill the gospell in principio; and at the beginning thereof the governour shall take the same hood again, and cause it to be carried away, and shall give him the taper again into his own hands.

12. And then, having a penny, or more, in readiness, near to the candlestick, at the words verbum caro factum of, the esquire, kneeling, shall offer the taper and the

peny; that is to fay, the taper to the honour of God, and the peny to the honour of the person that makes him a knight. All which being performed, the efquire's governours shall conduct the esquire to his chamber, and shall lay him again in bed till it be full day light. And when he shall be thus in bed, till the time of his rifing, he shall be cloathed with a covering of gold, called Singleton, and this shall be lined with blew Cardene. And when the governours shall see it fit time, they shall go to the king, and fay to him; Sir, when doth it pleafe you that our master shall rise? Whereupon the king shall command the grave knights, efquires, and minstrells, to go to the chamber of the faid efquire for to raife him, and to attire and dress him, and to bring him before him into the hall. But, before their entrance, and the noise of the minftrells heard, the efquire's governours shall provide all necessaries ready for the order, to deliver to the knights, for to attire and drefs the efquire.

And when the knights are come to the efquire's chamber, they shall enter with leave, and fay to him; "Sir, Good morrow to you, it is time to get up and " make yourfelf ready;" and thereupon they shall take him by the arm to be dreffed, the most antient of the faid knights reaching him his shirt, another giving him his breeches, the third his doublet; and another putting upon him a kirtle of red Tartarin, two other shall raise him from the bed, and two other put on his nether flockings, with foles of leather fowed to them: two other shall lace his sleives, and another shall gird him with a girdle of white leather, without any buckles thereon: another shall combe his head; another shall put on his coife: another shall give him his mantle of filk (over the bases or kirtle of red Tartarin) tyed with a lace of white filk, with a pair of white gloves hanging at the end of the lace. And the chandler shall take for his fees all the garments, with the whole array and necessaries wherewith

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wherewith the efquire shall be apparelled and cloathed on the day that he comes into the court to receive the order; as also the bed wherein he first lay after his bathing, together with the singleton and other necessaries; in consideration of which sees, the same chandler shall find, at his proper cost, the said coise, the gloves, the girdle, and the lace.

13. And when all this is done, the grave knights shall get on horseback, and conduct the esquire to the hall, the minstrells going before making musick: But the horse must be accoutred as followeth: The faddle having a cover of black leather, the bow of the faddle being of white wood quartered. The stirrup-leathers black, the stirrups gilt; the paitrell of black leather gilt, with a cross pate gilt, hanging before the breast of the horse, but without any crooper: The bridle black, with long notched rains, after the Spanish fashion, and a cross pats on the front. And there must be provided a young esquire, courteous, who shall ride before the esquire, bareheaded, and carry the esquire's sword, with the fpurs hanging at the handle of the fword; and the fcabbard of the fword shall be of white leather, and the girdle of white leather, without buckles. And the youth shall hold the fword by the point, and after this manner must they ride to the king's hall, the governours being ready at hand.

14. And the grave knights shall conduct the said efquire; and so soon as they come before the hall dore, the marshalls and hushiers are to be ready to meet him, and desire him to alight; and being alighted, the marshall take the horse for his see, or else cs. Then shall the knights conduct him into the hall, up to the high table, and afterwards up to the end of the second table, until the king's coming, the knights standing on each side of him, and the youth holding the sword upright before him, between the two governours.

15. And when the king is come into the hall, and beholdeth the esquire ready to receive this high order and temporal dignitie, he shall aske for the sword and spurs, which the chamberlain shall take from the youth, and fhew to the king; and thereupon the king, taking the right fpur, shall deliver it to the most noble and gentile person there, and shall fay to him, " Put this upon the " efquire's heel;" and he kneeling on one knee, must take the equire by the right leg, and, putting his foot on his own knee, is to fasten the spur upon the right heel of the esquire; and then making a cross upon the esquire's knee, shall kiss him; which being done, another knight must come and put on his left spur in the like manner. And then shall the king, of his great favour, take the fword and gird the efquire therewith; whereupon the esquire is to lift up his arms, holding his hands together, and the gloves betwixt his thumbs and fingers.

16. And the king, putting his own armes about the efquire's neck, shall say, Be thou a good knight, and afterwards kiss him. Then are the ancient knights to conduct this new knight to the chapell, with much musick, even to the high altar, and there he shall kneel, and, putting his right hand upon the altar, is to promise to maintain the rights of the holy church, during his whole life.

17. And then he shall ungirt himself of his sword, and, with great devotion to God and holy church, offer it there; praying unto God and all his saints, that he may keep that order, which he hath so taken, even to the end: All which being accomplished, he is to take a draught of wine.

18. And, at his going out of the chapell, the king's master cook being ready to take off his spurs, for his own fee, shall say, "I the king's master cook am come "to receive your spurs for my fee; and if you do any "thing

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"thing contrary to the order of knighthood, (which God forbid), I shall hack your spurs from your heels."

19. After this the knights must conduct him again into the hall, where he shall sit the first at the knight's table, and the knights about him, himself to be served as the others are; but he must neither cut nor drink at the table, nor spit, nor look about him, upwards or downwards, more than a bride. And this being done, one of his governours having a handkerchief in his hand, shall hold it before his face when he is to spit. And when the king is risen from the table, and gone into his chamber, then shall the new knight be conducted with great store of knights, and minstrells proceeding before him, into his own chamber; and at his entrance, the knights and minstrells shall take leave of him, and go to dinner.

20. And the knights being thus gone, the chamber dore shall be fastened, and the new knight disrobed of his attire, which is to be given to the kings of armes, in case they be there present; and if not, then to the other heralds, if they be there; otherwise, to the minstrells, together with a mark of silver, if he be a knight bacheler; if a baron, double to that; if an earl, or of a superior rank, double thereto. And the russet night-cap must be given to the watch, or else a noble.

Then is he to be cloathed again with a blew robe, the fleives whereof to be streight, shaped after the fashion of a priest's; and upon his left shoulder to have a lace of white silk hanging: And he shall wear that lace upon all his garments, from that day forwards, untill he have gained some honour and renown by arms, and is registred of as high record as the nobles, knights, esquires, and heralds of arms; and be renowned for some steats of arms as aforesaid; or, that some great prince, or most noble ladie, can cut that lace from his shoulder,

faying,

faying, "Sir, we have heard so much of the true re"nown concerning your honour which you have done
"in divers parts, to the great same of Chivalrie, as to
"yourself, and of him that made you a knight, that it
"is meet this lace be taken from you."

21. After dinner, the knights of honour and gentlemen, must come to the knight, and conduct him into the presence of the king, the esquire's governours going before him, where he is to say, "Right noble and re-"nowned Sir! I do in all that I can give you thanks "for these honours, curtesies, and bountie which you "have vouchsafed to me." And having so said, shall take his leave of the king.

22. Then are the efquire's governours to take leave of this their mafter, faying, "Sir! we have, according to "the king's command, and as we were obliged, done "what we can; but if through negligence we have in aught displeased you, or by any thing we have done amis at this time, we desire pardon of you for it. And, on the other side, Sir, as right is, according to the customs of the court, and ancient kingdoms, we do require our robes and fees, as the king's esquire's, companions to batchelors and other lords."

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